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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206-AE82

Prevailing Rate Systems

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a final rule to abolish the Imperial, California, Nonappropriated Fund (NAF) Wage Area and define it as an area of application to the Yuma, Arizona, NAF wage area. The Imperial County, California, survey area does not have the required minimum of 26 NAF wage employees, and no local activity has the capability to conduct a wage survey.

EFFECTIVE DATE: September 10, 1992.

FOR FURTHER INFORMATION CONTACT: Brenda Roberts (202) 606-2848.

SUPPLEMENTARY INFORMATION: On December 6, 1991, OPM published an interim rule (56 FR 63865) to abolish the Imperial, California, wage area and define it as an area of application to the Yuma, Arizona, NAF wage area. Imperial County, California, was previously defined as a separate wage area for NAF pay-setting purposes. The Department of Defense notified OPM that Imperial County, California, no longer meets the regulatory criteria for an established NAF wage area under § 532.219 of title 5, Code of Federal Regulations. The Imperial County, California, survey area does not have the required minimum of 26 NAF wage employees, and no local activity has the capability to conduct a wage survey. Since the Imperial wage survey was due to begin, it was necessary to take immediate action and issue an interim rule.

OPM received one comment in response to the interim rule. The comment, from a Member of Congress, opposed the redefinition because of possible recruitment and retention problems and the hardship that pay caps have placed upon employees. For the following reasons, we have not modified the interim regulations based upon these concerns. Eligible permanent employees with higher previous rates on the Imperial, California, wage schedule (in comparison to the new Yuma, Arizona, wage schedule) will retain their current rates of pay. These employees will also receive 50 percent of any wage increase in the maximum rate of their grades until such time as their retained pay rate is equal to or less than the maximum rate of their grade on their new wage schedule. Also, we note that agencies may request OPM approval of pay cap exceptions or special rates to alleviate significant recruitment or retention problems.

Since the Imperial, California, wage area is correctly abolished and defined as an area of application to the Yuma, Arizona, wage area under the regulatory criteria for establishing and combining wage areas, the interim rule is being adopted as a final rule.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Government employees, Wages.

U.S Office of Personnel Management.

Douglas A. Brook,

Acting Director.

Accordingly, OPM adopts its interim regulation amending 5 CFR part 532 published on December 6, 1991 at 56 FR 63865 as final without change.

[FR Doc. 92-18950 Filed 8-10-92; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 932

[Docket No. FV-91-459IFR]

Olives Grown in California; Establishment of Grade and Size Requirements for Olives Authorized for Limited Use Styles During the 1992-93 Season

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes the use of smaller sized olives in the production of limited use styles during the 1992-93 crop year and establishes minimum grade and size requirements for such olives in the order's rules and regulations. The 1992-93 crop year begins August 1, 1992, and ends July 31, 1993. Olives used in limited use styles are too small to be desirable for use as whole or whole pitted canned olives because their flesh-to-pit ratio is too low. However, they are satisfactory for use in the production of limited use styles. This action would help the California olive industry meet the increasing market needs of the food service industry by making smaller olives available for use in the production of limited use styles and improve returns to growers. This action was unanimously recommended by the California Olive Committee (committee), which works with the Department of Agriculture (Department) in administering the marketing order program for olives grown in California.

DATES: This action is effective August 1, 1992. Comments which are received by September 10, 1992 will be considered prior to issuance of a final rule.

ADDRESSES: Written comments concerning this interim final rule should be submitted in triplicate to the Docket Clerk, F&V Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456. All comments submitted will be made available for public inspection in the above office during regular business hours. Comments should reference the docket number and the date and page number of this issue of the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Caroline C. Thorpe, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–8139.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Order No. 932 (7 CFR part 932), as amended, regulating the handling of olives grown in California, hereinafter referred to as the order. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This interim final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

It is estimated that 6 handlers of California olives will be subject to regulation under the order during the current season, and there are approximately 1,350 olive producers in California. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. Most but not all of the olive producers may be classified as small entities. None of the olive handlers may be classified as small entities.

Nearly all of the olives grown in the United States are produced in California. The growing areas are scattered throughout California with most of the commercial production coming from inland valleys. In 1990, about 77 percent of the production came from the San Joaquin Valley and 23 percent from the Sacramento Valley. California olives are primarily used for canned ripe whole and whole pitted olives which are eaten out of hand as hors d'oeuvres or used as an ingredient in cooking and in salads. The canned ripe olive market is essentially a domestic market. Very few California olives are exported.

Olive production has fluctuated from a low of 24,200 tons during the 1972–73 crop year to a high of 146,500 tons during the 1982–83 crop year. The committee indicated that 1990–91 production totalled about 126,872 tons. The various varieties of olives produced in California have alternate bearing tendencies with high production one year and low the next. Preliminary estimates of 1991–92 production total approximately 57,192 tons. It is too early to estimate 1992–93 production. However, based on past production and marketing experience, the committee believes that handlers will need smaller sized olives during the 1992–93 crop year to meet market requirements for limited use styles of canned olives. Absent this action, olives which are smaller than those authorized for whole and whole pitted canning uses would have to be disposed of by handlers into non-canning uses such as crushing into oil.

Paragraph (a)(3) of § 932.52 of the order provides that processed olives smaller than the sizes prescribed for whole and whole pitted styles may be used for limited uses if recommended by the committee and approved by the Secretary. Until October 1, 1991, paragraph (a)(3) also prescribed minimum sizes, by variety group, which could be authorized for use in the production of limited use styles by the Secretary.

Effective October 1, 1991, certain non-canning size disposition requirements specified in § 932.51(a)(3) and minimum sizes authorized for limited use specified in § 932.52(a)(3) of the marketing order were suspended. The committee may now recommend the use of olives for limited uses that are smaller than those previously permitted under the order. Minimum size and grade requirements may be recommended annually by the committee and approved by the Secretary. The sizes authorized herein are the same as those established for the 1991–92 crop year.

The minimum sizes which could previously be authorized for limited uses were established in a 1971 amendment to the marketing order. Olives smaller than the prescribed minimum sizes which could be authorized for limited uses had to be disposed of for less profitable non-canning uses such as crushing for oil. Returns to producers are lower on smaller fruit used for such purposes. The use of smaller sized olives for limited use styles has been authorized in all but two crop years since the order was instituted in 1965.

Since the 1971 amendment, there have been substantial changes within the olive industry. In spite of the annual limited use authorization, in recent years the industry has not been able to meet market requirements for its products, especially the limited use styles used primarily by the food service industry. The demand for processed olives and for limited use styles is expected to continue to increase. At the same time, the industry has not been able to increase production to meet market needs for canned ripe olives.

The committee conducted a study during the 1990–91 crop year to determine the feasibility of utilizing smaller sized olives in the production of limited use styles and to determine which sizes could be efficiently processed into such styles. All olive handlers within the industry participated in the study. All handlers reported that smaller sizes can be efficiently processed into limited use styles. Advanced technology in the form of better processing equipment is currently available. The new technology allows handlers to process smaller olives into limited use styles more efficiently than was possible in the past.

This action would help growers and handlers meet the growing market

requirements for limited use style olives based upon current conditions. The size requirements allow the use of sizes which would otherwise have to be disposed of for non-canning use. In turn, growers would receive a larger return from such olives.

This action establishes grade and size regulations for 1992–93 crop olives to be used for limited use styles pursuant to paragraph (a)(3) of § 932.52 of the order. The grade requirements are the same as established in recent seasons. The specific sizes for the variety groups are the minimum sizes which are deemed desirable for use in the production of limited use styles at this time. As in past years, permitting the use of the smaller olives in the production of limited use styles would allow handlers to take advantage of the strong market for halved, segmented, sliced, and chopped canned ripe olives. Handlers would be able to market more olives than would be permitted in the absence of this relaxation in size requirements. This additional opportunity is provided to maximize the use of the available olive supplies and facilitate market expansion, thereby increasing returns to growers. In the absence of this action, the smaller fruit would have to be disposed of for less profitable, non-canning uses.

Section 8(e) of the Act requires that whenever grade, size, quality, or maturity requirements are in effect for olives under a domestic marketing order, imported olives must meet the same or comparable requirements. This action allows smaller olives for limited use styles under the marketing order. Thus a corresponding change would be needed in the olive import regulation. Such a change would be addressed in a separate rulemaking action.

Based on available information, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities and that the proposal would benefit both producers and handlers of California olives.

After consideration of all relevant matter presented, including information and recommendations submitted by the committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This rule relieves handling requirements, and to be of maximum benefit for the 1992–93 season should be effective by August 1; (2) olive handlers are aware of this action which was unanimously recommended by the committee at a public meeting; (3) there is no special preparation required by affected handlers; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 932

Marketing agreements, Olives, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 932 is amended as follows:

PART 932—OLIVES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 932 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 932.153 is revised to read as follows:

§ 932.153 Establishment of grade and size requirements for processed 1992–93 crop year olives for limited uses.

(a) *Grade.* On and after August 1, 1992, any handler may use processed olives of the respective variety group in the production of limited use styles of canned ripe olives if such olives were processed after July 31, 1992, and meet the grade requirements specified in paragraph (a)(1) of § 932.52 as modified by § 932.149.

(b) *Sizes.* On and after August 1, 1992, any handler may use processed olives in the production of limited use styles of canned ripe olives if such olives were harvested during the period August 1, 1992, through July 31, 1993, and meet the following requirements:

(1) The processed olives shall be identified and kept separate and apart from any olives harvested before August 1, 1992, or after July 31, 1993.

(2) Variety Group 1 olives, except the Ascolano, Barouni, or St. Agostino varieties, shall be of a size which individually weigh at least 1/105 pound: *Provided*, That no more than 35 percent of the olives in any lot or sublot may be smaller than 1/105 pound.

(3) Variety Group 1 olives of the Ascolano, Barouni, or St. Agostino varieties shall be of a size which individually weigh at least 1/180 pound: *Provided*, That no more than 35 percent of the olives in any lot or sublot may be smaller than 1/180 pound.

(4) Variety Group 2 olives, except the Obliza variety, shall be of a size which individually weigh at least 1/205 pound: *Provided*, That not to exceed 35 percent of the olives in any lot or sublot may be smaller than 1/205 pound.

(5) Variety Group 2 olives of the Obliza variety shall be of a size which individually weigh at least 1/180 pound: *Provided*, That not to exceed 35 percent of the olives in any lot or sublot may be smaller than 1/180 pound.

Dated: August 5, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–19027 Filed 8–10–92; 8:45 am]

BILLING CODE 3410–02–M

Agriculture Marketing Service

7 CFR Part 944

[Docket No. FV–91–460IFR]

Olives Imported Into the United States; Authorization To Import Smaller Sized Olives for Limited Uses and Establishment of Minimum Size Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes the importation of certain bulk olives into the United States to be used in the production of limited use styles of olives such as wedges, halves, slices, or segments. Such olives would not be required to meet the minimum size requirements established for olives used in the production of whole and whole pitted canned ripe olives. This rule also establishes alternative minimum size requirements for such olives during the 1992–93 season. This action is required under section 8e of the Agricultural Marketing Agreement Act of 1937 to bring the olive import regulation into conformity with the requirements established under the California olive marketing order.

DATES: This action is effective August 1, 1992. Comments which are received by September 10, 1992 will be considered before the issuance of any final rule.

ADDRESSES: Written comments concerning this rule should be submitted in triplicate to the Docket Clerk, F&V Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456. All comments submitted will be

made available for public inspection in the above office during regular business hours. Comments should reference the docket number and the date and page number of this issue of the Federal Register.

FOR FURTHER INFORMATION CONTACT: Caroline C. Thorpe, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–8139.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act, which provides that whenever certain specified commodities, including olives, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality and maturity requirements as those in effect for the domestically produced commodity.

This interim final rule has been reviewed by the Department of Agriculture in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. There are approximately 25 importers of olives subject to the olive import regulation. Small agricultural service firms, which would include olive importers, have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $3,500,000. The majority of olive importers may be classified as small entities.

Canned ripe olives, and bulk olives for processing into canned ripe olives, imported into the United States must meet certain minimum grade and size requirements specified in Olive Regulation 1 (7 CFR 944.401). All canned ripe olives are required to be inspected and certified prior to importation (release from custody of the United States Custom Service), and all bulk olives for processing into canned ripe olives must be inspected and certified prior to canning. "Canned ripe olives" means olives in hermetically sealed containers and heat sterilized under pressure, of two distinct types, "ripe" and "green-ripe", as defined in the current U.S. Standards for Grades of Canned Ripe Olives (7 CFR 52.3751–52.3764). The term does not include Spanish-style green olives. Any lot of olives failing to meet the import requirements may be exported or disposed of under the supervision of the Processed Products Branch of the Fruit and Vegetable Division, with the costs of certifying the disposal of the olives borne by the importer. Any person may import up to 100 pounds (drained weight) of canned ripe olives or bulk olives exempt from these grade and size requirements.

This interim final rule modifies paragraph (b)(12) of the olive import regulation (7 CFR 944.401(b)(12)) to authorize the importation of bulk olives which do not meet the minimum size requirements established for olives for whole and whole pitted uses to be used in the production of limited use styles for the 1992–93 season which begins August 1, 1992. This rule also establishes size regulations for such olives in paragraph (b)(12).

Import regulations issued under the Act are based on regulations established under Federal marketing orders to regulate domestically produced products. The grade and size requirements contained in the olive import regulation are based on those in effect for olives grown in California under Marketing Order No. 932. This action reflects a recommendation by the California Olive Committee (committee) to change the requirements for olives for limited use styles grown in California. The committee works with the Department in administering the marketing order program for California olives.

Paragraph (a)(3) of § 932.52 of the California olive marketing order provides that processed olives smaller than the sizes prescribed for whole and whole pitted styles may be used for limited uses if recommended by the committee and approved by the Secretary. The sizes are specified in terms of minimum weights for individual olives in various size categories by variety groups. This is to recognize the different sizing characteristics of the individual varieties and types of California olives. Olives used in limited use styles are too small to be desirable for use as whole or whole pitted canned olives because their flesh-to-pit ratio is too low. However, they are satisfactory for use in the production of limited use styles.

On December 2, 1991, the committee recommended the establishment of minimum sizes that would be authorized for use in the production of limited use styles during the 1992–93 season. These minimum sizes would be the same as those established for the 1991–92 season. The size requirements are based on a study conducted by the committee during the 1990–91 crop year. The sizes are specified in terms of minimum weights for individual olives in various variety groups and are the same for both domestic and imported olives. An extra category is continued in the import regulation to apply comparable requirements for varieties not grown domestically. The minimum sizes are as follows:

Variety Group I, except the Ascolano, Barouni, or St. Agostino varieties.	1/105 pound
Variety Group I of the Ascolano, Barouni, or St. Agostino varieties.	1/180 pound
Variety Group 2, except the Obliza variety.	1/205 pound
Variety Group 2 of the Obliza variety.	1/80 pound
Olives not identifiable as to variety or variety group.	1/205 pound

Each of the categories includes a 35 percent tolerance for olives weighing less than the specified minimum size.

This action is necessary because section 8e of the Act provides that when domestically produced olives are regulated under a Federal marketing order, imported olives must meet the same or comparable grade, size, quality, and maturity requirements. Thus, authorizing the use of smaller sized California olives in the production of limited use styles and establishing size regulations for such olives requires that the same or comparable regulations be issued for imported bulk olives. Domestic requirements for California olives are being revised in a separate rulemaking action.

Permitting the use of smaller olives in the production of limited use styles will allow importers to take better advantage of the strong market for halved, segmented, sliced, and chopped canned ripe olives. Importers will be able to

import and market more olives than would be permitted in the absence of this relaxation in size requirements. This additional opportunity is provided to maximize the use of the available olive supply and facilitate market expansion. In the absence of this action, the smaller fruit could not be imported for limited uses, and would have to be disposed of for less profitable, non-canning uses under the supervision of the inspection service or exported.

Based on available information, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant information available it is found that this action, as set forth below, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined, upon good, cause, that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to implementing this action, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This relaxation provides importers the opportunity to import additional supplies of olives to meet market needs for limited use styles; (2) no useful purpose would be served by providing preliminary notice before implementation; and (3) this rule provides a 30-day comment period and any comments received will be considered prior to finalization of this rule.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this interim final rule.

List of Subjects in 7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives and Oranges.

PART 944—FRUITS: IMPORT REGULATIONS

1. The authority citation for 7 CFR part 944 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 944.401 is amended by revising paragraph (b)(12) to read as follows:

Note: This section will appear in the annual code of Federal Regulations.

§ 944.401 Olive Regulation 1.

* * * * *

(b) * * *

(12) Imported bulk olives when used in the production of canned ripe olives must be inspected and certified as prescribed in this section. Imported bulk olives which do not meet the applicable minimum size requirements specified in paragraphs (b)(2) through (b)(11) of this section may be imported during the period August 1, 1992, through July 31, 1993, for limited use, but any such olives so used shall not be smaller than the following applicable minimum size:

(i) Whole ripe olives of Variety Group 1, except the Ascolano, Barouni, or St. Agostino varieties, of a size that not more than 35 percent of the olives, by count, may be smaller than 1/105 pound (4.3 grams) each.

(ii) Whole ripe olives of Variety Group 1 of the Ascolano, Barouni, or St. Agostino varieties, of a size that not more than 35 percent of the olives, by count, may be smaller than 1/180 pound (2.5 grams) each.

(iii) Whole ripe olives of Variety Group 2, except the Obliza variety, of a size that not more than 35 percent of the olives, by count, may be smaller than 1/205 pound (2.2 grams) each.

(iv) Whole ripe olives of Variety Group 2 of the Obliza variety of a size that not more than 35 percent of the olives, by count, may be smaller than 1/180 pound (2.5 grams) each.

(v) Whole ripe olives not identifiable as the variety or variety group of size that not more than 35 percent of olives, by count, may be smaller than 1/205 pound (2.2 grams) each.

Dated: August 5, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–19028 Filed 8–10–92; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 903

[Docket No. 920663–2163]

Public Information

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Final rule.

SUMMARY: NOAA is revising its regulations at 15 CFR part 903 to remove superseded regulations regarding the public's access to NOAA information materials under the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended, and instead reference the regulations followed by NOAA—the applicable Department of Commerce-wide regulations governing the public's access to information under FOIA found at 15 CFR part 4. The intended effect of this action is to update NOAA's FOIA regulations.

EFFECTIVE DATE: August 11, 1992.

FOR FURTHER INFORMATION CONTACT: Marie Marks, Chief, Paperwork Management Branch, National Oceanic and Atmospheric Administration, 6020 Executive Blvd., room 714, Rockville, MD 20852, (301–443–8967).

SUPPLEMENTARY INFORMATION: The NOAA FOIA regulations at 15 CFR part 903 have been superseded by Department of Commerce-wide regulations governing the public's access to information under FOIA found at 15 CFR part 4. Furthermore, the NOAA regulations have not been updated to reflect amendments to the FOIA that have been incorporated in the Department-wide regulations. 15 CFR part 4 provides an updated explanation of the scope, purpose, policies, and guidelines for making certain records publicly available pursuant to the FOIA. As an agency of the Department of Commerce, NOAA follows 15 CFR part 4. Accordingly, NOAA is revising 15 CFR part 903 to state that the rules and procedures regarding public access to NOAA records are found at 15 CFR part 4.

NOAA finds for good cause that it is unnecessary to provide notice and comment and a delayed effective date under section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553, for this rule. These APA requirements are unnecessary because NOAA merely is removing superseded regulations and instead referencing the applicable existing regulations.

Because a notice of proposed rulemaking is not required by section 553 of the APA or by any other law, a regulatory flexibility analysis is not required pursuant to the Regulatory Flexibility Act, 5 U.S.C. 603(a), 604(a).

List of Subjects in 15 CFR Part 903

Freedom of information, Organization and functions (Government Agencies).

D.E. Humpries,

Deputy Director, Office of Administration.

For the reasons set forth in the preamble, 15 CFR part 903 is revised to read as follows:

PART 903—PUBLIC INFORMATION

Authority: 5 U.S.C. 552 as amended by Pub. L. 93–502; 5 U.S.C. 553; Reorg. Plan No. 2 of 1965, 15 U.S.C. 311 note; 32 FR 9734, 31 FR 10752.

§ 903.1 Access to information.

The rules and procedures regarding public access to the records of the National Oceanic and Atmospheric Administration are found at 15 CFR part 4.

[FR Doc. 92-18736 Filed 8-10-92; 8:45 am]
BILLING CODE 3510-22-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 4

[T.D. 92-74]

Unlading of Foreign Vessels Allowed Prior to Entry at U.S. Ports Subsequent to Initial U.S. Port of Arrival

AGENCY: U.S. Customs Service, Department of the Treasury

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to provide that it is within the discretion of the district director to issue a permit to unlade to allow a foreign vessel that has already made formal entry at its first port of arrival in the U.S. to unlade foreign residue cargo at subsequent coastwise ports without the necessity of making preliminary entry and prior to the vessel making formal entry at those ports. If the district director deems it necessary, however, before allowing unlading prior to the vessel's formal entry, he may require the master to make an oath or affirmation to the truth of the statements contained in the vessel's manifest to a Customs officer who boards the vessel and require delivery of the manifest prior to issuing the permit to unlade. All foreign vessels are still required to report arrival and make formal entry at all coastwise ports. This amendment will expedite the discharge of cargo without diminishing Customs enforcement effectiveness.

EFFECTIVE DATE: September 10, 1992.

FOR FURTHER INFORMATION CONTACT: Leo Morris, Office of Inspection and Control (202-566-8151).

SUPPLEMENTARY INFORMATION:

Background

On January 24, 1992, a document was published in the **Federal Register** (57 FR 2859) soliciting comments regarding a Customs proposal to amend the Customs Regulations regarding preliminary entry.

Customs proposed to amend § 4.8, Customs Regulations (19 CFR 4.8) to clarify that preliminary entry is required for both U.S. and foreign vessels arriving from a foreign port or place that wish to discharge cargo, passengers or baggage or take on cargo, passengers or baggage before the vessel has been formally entered. Further, the document proposed to amend § 4.30, Customs Regulations (19 CFR 4.30) to provide that permits to unlade or lade may be issued by the district director to a foreign vessel arriving at a U.S. port from another U.S. port prior to formal entry and without the vessel having to make preliminary entry at the second port and to a U.S. vessel arriving at a U.S. port from another U.S. port without requirement of entry at the second port. If he deems it necessary, the document proposed, the district director may require the master to make an oath or affirmation to the truth of statements contained in the vessel's manifest to a Customs officer who boards the vessel prior to issuing the permit.

Conforming amendments were also proposed to §§ 4.1, 4.7, 4.10, 4.13, 4.81, 4.85 and 4.87, Customs Regulations (19 CFR 4.1, 4.7, 4.10, 4.13, 4.81, 4.85 and 4.87) to reflect the changes proposed to §§ 4.8 and 4.30.

The reason for these proposed amendments is that Customs believes that by easing the requirement that preliminary entry be made before a foreign vessel may be issued a permit to lade or unlade when arriving from another U.S. port, but by retaining the right to board and examine manifests if necessary, Customs efficiency regarding the discharge of cargo, passengers and baggage will be improved without a diminution in enforcement effectiveness.

Discussion of Comments

Nine comments were received in response to the proposal. While five commenters fully supported the proposal, certain concerns were raised. A discussion of specific comments follows.

Comment: The regulations should be clarified to state that the district director need not grant preliminary entry whenever it is requested.

Response: Customs totally agrees with the commenter that it is within the district director's discretion to determine whether to allow preliminary entry when it is requested. Section 4.1(b), Customs Regulations is accordingly amended.

Comment: The regulations should list various scenarios when preliminary entry is not required.

Response: Customs disagrees. Regulations are not the proper forum for listing every permutation of vessel arrival and cargo lading or unlading. The different scenarios can be examined individually using these and other regulations and the relevant statutes as guidelines. If preliminary entry is not required, but is requested, the district director should instruct the requesting carrier that preliminary entry is not necessary prior to the lading or unlading of passengers, cargo or baggage.

Comment: The regulations should include a provision that carriers who are not participants in the Automated Manifest System must present their cargo manifest to Customs 24 hours prior to arrival.

Response: Customs disagrees. The statute that discusses the delivery of the manifest to Customs, 19 U.S.C. 1439, requires the manifest to be delivered immediately upon arrival of the vessel. The statute does not support requiring the manifest in advance.

Comment: Do these amendments alter manifest discrepancy reporting requirements?

Response: No. These regulations do not affect or address manifest discrepancy reporting requirements.

Comment: The proposed amendments are in violation of 19 U.S.C. 1447, 1448 and 1449 which require a vessel carrying merchandise, persons or baggage originating in a foreign place to make entry prior to unlading. This will adversely affect Customs enforcement efforts.

Response: Customs disagrees with the commenter's interpretation of these statutes. Two of the cited statutes, 19 U.S.C. 1447 and 1449, are not the statutory authority for these amendments. Nor do they say what this commenter alleges them to say. These statutes address where entry and unlading may take place and under what conditions exceptions may be granted. They do not address the authority to unlade or lade cargo or make preliminary entry.

The statute that covers preliminary entry and unlading or lading of vessels is 19 U.S.C. 1448. The commenter interprets the language in this statute to imply preliminary entry is required if a vessel wishes to discharge cargo originating in a foreign place. However, the statute clearly addresses the entry and origin of the vessel and not the cargo.

Customs already permits U.S. vessels to unlade merchandise, passengers or baggage at coastwise ports without an entry because the statute requiring entry of U.S. vessels, 19 U.S.C. 1434, and the statute addressing unlading only requires entry when arriving from foreign ports. Foreign vessels are required to make entry at each port under 19 U.S.C. 1435, but once again, the unlading statute only requires preliminary entry of vessels arriving

from a foreign port that wish to discharge cargo prior to formal entry.

These amendments do not adversely affect any of Customs enforcement actions. Customs still has the authority to board any vessels when it believes it necessary. The statutes and regulations giving Customs the authority to board and search vessels and review ships' documents are not affected by these amendments.

Comment: These amendments will not benefit West Coast vessel arrivals because the amendments will require Customs to board two to three times more vessels.

Response: Customs disagrees. The obvious result of these amendments will be to reduce the number of ship arrivals that will require preliminary entry and, therefore, a boarding. There will certainly not be a twofold or threefold increase in vessel boardings.

Conclusion

After careful consideration of all the comments received and further review of the matter, it has been determined that the amendments, with the modification discussed above, should be adopted.

Executive Order 12291

This document does not meet the criteria for a major rule as specified in E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, they are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Drafting Information

The principal author of this document was Harold M. Singer, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Part 4

Carrier, release of merchandise, Vessels.

Amendments to the Regulations

Part 4, Customs Regulations, 19 CFR Part 4 is amended as set forth below:

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The general authority citation for Part 4 and the specific authority citations for §§ 4.7, 4.8, 4.10, 4.81 and 4.85 continue to read as follows and the relevant specific authority citations for §§ 4.1 and 4.30 are revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1624; 46 U.S.C. App. 3;

§ 4.1 also issued under 19 U.S.C. 1581(a), 46 U.S.C. App. 158, 163;

* * * * *

§ 4.7 also issued under 19 U.S.C. 1431, 1439, 1465, 1581(a), 1583; 46 U.S.C. App. 883a, 883b;

§ 4.8 also issued under 19 U.S.C. 1448, 1486;

* * * * *

§ 4.10 also issued under 19 U.S.C. 1448, 1451;

* * * * *

§ 4.30 also issued under 19 U.S.C. 288, 1433, 1446, 1448, 1450–1454, 1490;

* * * * *

§ 4.81 also issued under 19 U.S.C. 1433, 1439, 1442, 1443, 1444, 1486; 46 U.S.C. App. 251, 313, 314, 883;

* * * * *

§ 4.85 also issued under 19 U.S.C. 1439, 1442, 1443, 1444, 1623;

* * * * *

2. Section 4.1(b) is revised to read as follows:

§ 4.1 Boarding of vessels; cutter and dock passes.

* * * * *

(b) Every vessel arriving within a Customs district directly from a point outside the Customs territory of the United States shall be boarded and shall be subject to such supervision while in port as the district director deems necessary. Boarding is required also whenever there is a preliminary entry. When he deems it desirable, the district director may detail Customs officers to remain on board a vessel to secure the enforcement of this part. Except as provided in paragraph (a) of this section, boarding of a vessel arriving within a Customs district directly from another port in the United States shall not be required.

* * * * *

3. Footnote 16 from Part 4 is removed.

4. Section 4.7 is amended by revising the second sentence of paragraph (b) and paragraph (d)(3) to read as follows:

§ 4.7 Inward foreign manifest; production on demand; contents and form.

* * * * *

(b) * * * The master shall deliver the original and one copy of the manifest to the Customs officer who shall first demand it. * * *

* * * * *

(d) * * *

(3) The declaration shall be ready for production on demand for inspection and shall be presented as part of the original manifest when formal entry of the vessel is made.

5. Footnote 18 is removed from Part 4.

6. Section 4.8 is revised to read as follows:

§ 4.8 Preliminary entry.

Preliminary entry allows a U.S. or foreign vessel arriving from a foreign port or place to discharge cargo, passengers or baggage or take on additional cargo, passengers or baggage prior to making formal entry at the customhouse by allowing the master to make an oath or affirmation to the truth of statements contained in the vessel's manifest and deliver the manifest to the customs officer who boards the vessel. Customs officers are required to board a vessel before preliminary entry is permitted. Preliminary entry shall be made by compliance with § 4.30 and execution by the master of the Master's Certificate on Preliminary Entry on Customs Form 1300.

7. Section 4.10 is amended by revising the first sentence to read as follows:

§ 4.10 Request for overtime services.

Request for overtime services in connection with entry or clearance of a vessel, including the boarding of a vessel in accordance with § 4.1 shall be made on Customs Form 3171.

* * * * *

8. Footnote 22 is removed from Part 4.

9. Section 4.13(a) is amended by revising the first sentence to read as follows:

§ 4.13 Alcoholic liquors on vessels of not over 500 net tons.

(a) When a vessel of not over 500 net tons which arrives from a foreign port or a hovering vessel has on board any alcoholic liquors, a certificate respecting the importation of any spirits, wines, or other alcoholic liquors on board, other than sea stores, shall be delivered to the appropriate Customs officer with the inward foreign manifest. * * *

* * * * *

9a. Footnote 25 is removed from Part 4.

10. Section 4.30 is amended by revising paragraphs (a) and (d) to read as follows:

§ 4.30 Permits and special licenses for unlading and lading.

(a) Except as prescribed in paragraph (f), (g), or (k) of this section or in § 123.8 of this chapter and except in the case of a vessel exempt from entry or clearance under 19 U.S.C. 288, no passengers, cargo, baggage or other article shall be unladen from a vessel which arrives directly from any port outside the

Customs territory of the United States or from a vessel which transits the Panama Canal and no cargo, baggage, or other article shall be laden on a vessel destined to a port or a place outside the Customs territory of the United States if Customs supervision of such lading is required until the district director shall have issued a permit or special license therefore on Customs Form 3171.

(1) U.S. and foreign vessels arriving at a U.S. port directly from a foreign port or place are required to make entry, whether it be formal or, as provided in § 4.8, preliminary, before the district director may issue a permit or special license to lade or unlade.

(2) U.S. vessels arriving at a U.S. port from another U.S. port at which formal entry was made may be issued a permit or special license to unlade or lade without having to make either preliminary or formal entry at the second and subsequent ports. Foreign vessels arriving at a U.S. port from another U.S. port at which formal entry was made may be issued a permit or special license to lade or unlade at the second and subsequent ports prior to formal entry without the necessity of making preliminary entry. In these circumstances, after the master has reported arrival of the vessel, the district director may issue the permit or special license or may, in his discretion, require the vessel to be boarded, the master to make an oath or affirmation to the truth of the statements contained in the vessel's manifest to the Customs officer who boards the vessel, and require delivery of the manifest prior to issuing the permit.

* * * * *

(d) Except as prescribed in paragraph (f) or (g) of this section, a separate application for a permit or special license shall be filed in the case of each arrival.

* * * * *

11. Footnotes 55 through 58 are removed from Part 4.

12. Section 4.81 (d) and (e) are amended by removing the words "the boarding officer" where they appear and inserting in their place the words "the appropriate Customs officer" and by removing the words "the Customs boarding officer" in § 4.81(e) and inserting in their place the words "the appropriate Customs officer".

13. Section 4.85 is amended by removing the words "the Customs boarding officer" appearing in the last sentence of paragraph (b) and inserting in their place the words "the appropriate Customs officer" and by revising paragraph (d) to read as follows:

§ 4.85 Vessels with residue cargo for domestic ports.

* * * * *

(d) If boarding is required before the district director will issue a permit or special license to lade or unlade, the abstract manifest described in paragraph (c) of this section shall be ready for presentation to the boarding officer.

* * * * *

14. Section 4.87(c) is amended by removing the words "the Customs boarding officer" and inserting in their place the words "the appropriate Customs officer".

Carol Hallett,

Commissioner of Customs.

Approved: June 22, 1992.

Nancy L. Worthington,

Acting Assistance Secretary of the Treasury.

[FR Doc. 92-18851 Filed 8-10-92; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

20 CFR Part 10

RIN 1215-AA67

Claims for Compensation Under the Federal Employees' Compensation Act, as Amended

AGENCY: Office of Workers' Compensation Programs, Labor.

ACTION: Final rule.

SUMMARY: On December 26, 1991, the Secretary of Labor published notice of a rule proposing to change the way lump sum payments of compensation under the Federal Employees' Compensation Act (FECA) are considered. Lump sum payments of wage-loss compensation benefits would no longer be made and new standards for considering lump sum payments of schedule awards were announced. The comment period closed February 10, 1992, and the comments received during that period have been considered. The rule is now published in final substantively unchanged from the proposed rule. The rule sets forth the Secretary's determination that, in the exercise of discretion afforded the Secretary in section 8135(a), lump sum payments of compensation benefits will no longer be made except for payments of schedule awards. In making this determination, the Secretary has considered a number of factors, including the fact that FECA is intended as income replacement and lump-sum payments are not a fiscally responsible method of fulfilling the government's obligations under the FECA for wage-loss compensation. The rule also indicates that it will generally not be in the best interest of the claimant to make lump-sum payment of schedule award benefits where the schedule award is a substitute for lost wages.

EFFECTIVE DATE: The rule is effective on September 10, 1992, and will apply to all pending cases.

FOR FURTHER INFORMATION CONTACT: Thomas M. Markey, Director for Federal Employees' Compensation, Employment Standards Administration, U.S. Department of Labor, room S-3229, Frances Perkins Building, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 523-7552.

SUPPLEMENTARY INFORMATION:

Introduction

The preamble to the proposed rule published December 26, 1991 (56 FR 66817), set forth the basis for the Secretary's determination that lump sum payments of wage-loss benefits under the Federal Employees' Compensation Act (FECA), 5 U.S.C. 8101, *et seq.*, will no longer be considered. None of the comments received undercuts the validity of the Secretary's reasoning and therefore such rationale is incorporated in this document.

The FECA, which is the workers' compensation law for Federal employees, provides a range of benefits for covered work-related injuries, including payment of wage loss compensation, schedule awards for permanent loss or loss of use of specified members of the body, and related medical costs. Under section 8135 of the FECA, the wage-loss and schedule award obligations of the government may be met through a lump sum payment of benefits, an amount determined by multiplying the yearly benefits by the number of years the beneficiary is expected to live and discounting at four percent. The decision to make a lump sum payment is completely at the discretion of the Secretary of Labor, who has delegated this authority to the Director of the Office of Workers' Compensation Programs (OWCP).

The discretion is twofold: First, whether or not to fulfill the government's obligation through a lump sum payment, since the statute only authorizes but does not require that such a form of payment be made; and second (if it is determined that a lump sum payment may be made) whether or not the payment may be made in the individual case. The statute does not

limit the Secretary's discretion in the first instance, but in the second, it limits the Secretary's authority to make such payments to only three situations: Where the monthly payment is less than $50; where the individual is about to become a nonresident of the United States; or where the Secretary determines that it is for the best interest of the beneficiary.

Over the life of the program, lump sum payments have rarely been made and, until now, the initial determination of whether or not to fulfill the government's obligation through a lump sum has been made on a case-by-case basis. Effective with this rule, however, lump sum payments will not be substituted for periodic wage-loss benefits under any circumstances. Where lump sum payment of compensation is required by statute pursuant to section 8135(b) (that is, where a surviving spouse entitled to compensation remarries before age 55), such payment shall be made. The Secretary has determined that a request for a lump sum payment for a schedule award will still be considered on a case-by-case basis, using the statutory criterion of whether the payment would be in the best interest of the claimant. It will generally not be considered in the claimant's best interest to grant a lump sum payment where the individual depends on the schedule award as a substitute for wage-loss.

The Secretary has made the determination that lump sum payments will not be made in cases involving periodic wage loss benefits based on several factors. Foremost among these is that regular periodic payments, providing for cost-of-living increases safe from speculation or economic fluctuations and free from creditors, generally more nearly provide the measure of security that the Act was designed to afford, and more closely approximates the lost wages that the Act is designed to replace. Lump sum payments are not in any way required in order to fulfill the purposes of the Act. In addition, periodic payments are also consistent with government accounting and budgeting practices, while lump sum payments are directly counter to those practices. This rule also represents sound fiscal policy, since the cost of lump sum payments is generally greater than periodic payments where interest rates are above four percent and the claimant does not live longer than the life tables project.

As noted, section 8135(a) merely authorizes lump sum payments and gives the Secretary broad discretion to determine whether to grant a request for lump sum payments. While the Secretary has until now chosen to exercise that discretion by deciding that each individual request should be reviewed, the proposed rule pointed out that such discretion can be exercised by deciding that no lump sum payments will be made. Since the Secretary has now determined that the government will fulfill its obligation for wage-loss benefits only by means of periodic rather than lump sum payments, there is no need to exercise further discretion in an individual case. See *International Union, UAW* v. *Dole*, 919 F.2d 753 (D.C. Cir. 1990). The administrative resources of the Secretary will thus be conserved, as the increasing number of lump sum requests may be dealt with on the basis of the regulation instead of on a case-by-case basis which required factual and medical development of each individual case.

Analysis of Comments

Eight comments were received: Three from Federal employing agencies, two from Federal employee unions, two from individuals and one from an association of injured workers. Two of the agency comments (both from the same agency) supported the rule, and a third noted that periodic payments most closely resemble the wages the compensation is designed to replace and stressed the adverse affect which a large jump in the FECA chargeback bills have on agencies' ability to meet their salary and expense obligations.

The two employee unions opposed the change. One stated that the rule would nullify the intent of Congress that lump sum payments should be considered, characterized the action as arrogant since it assumes that all applications so lack merit as to warrant summary rejection, and stressed that the interpretation of the discretionary authority upon which this rule is based was too broad, and could set a precedent in other areas of the FECA which are discretionary. The other union characterized this action as an abuse of the discretionary authority granted by Congress. Both unions urged the Department to continue considering such requests on a case-by-case basis.

The Department believes that the concerns expressed by the unions were anticipated and fully addressed in the preamble to the proposed rule. There, the Department carefully considered the legislative history surrounding the lump sum provision, described how the lump sum authority has been acted upon since 1916, and discussed in detail the scope of the discretionary authority granted the Secretary. The Department also carefully considered the option of continuing to consider such applications on a case-by-case basis, but rejected it, noting in part that the current practice has led many individuals to incur considerable expense in the hopes of getting a lump sum payment. The limited resources of the Department to accomplish its mission of adjudicating claims and administering the program are increasingly strained by more lump sum requests. The adverse effect of the expenditure of administrative resources on this discretionary function now far outweighs the benefit of continuing to consider each lump sum request on a case-by-case basis.

Two individuals also commented. A former assistant secretary for the Department, opposed the change because it was unnecessary given "the longstanding policy of not approving lump sum benefit payments * * *." The costs associated with case-by-case consideration, it is argued, are worth it in the interests of justice. The commentor also points out that the rule limits the authority given the Department by Congress and questions why the Department would choose to do so. The Department has stated the basis for this rule and believes that the benefits to both the claimants and the government far outweigh the advantage while continuing to exercise that discretion on a case-by-case basis affords.

Another individual termed the rule presumptuous because it assumes workers are not able to handle large sums of money, and questioned whether lump sum payments are a burden to employing agencies. That individual also noted that a detailed cost/benefit analysis had not been performed. The Department does not presume that every individual would be unable to properly invest large sums of money to ensure an adequate income in the future. The rule is not predicated on that basis, although a statement from an annual report of the Employment Compensation Commission was quoted which contains language to this effect. Instead, the Department points to the fact that periodic payments most closely resemble the wages which are lost because of an injury and that benefits are not intended to enrich an individual. The Department believes that its analysis of the costs and benefits of borrowing funds to make lump sum payments versus making periodic payments is sufficiently detailed.

The final comment came from an association of injured workers. In general, these comments contained the following arguments:

1. The General Accounting Office, at the request of the House Education and Labor Committee, is conducting a comprehensive study of the FECA and OWCP's administration, and that any decision on this rule should await the outcome of the study;

2. The proposed rule was unethical and illegal because it failed to cite the Employees' Compensation Appeals Board (ECAB) decisions in *Billy G. Reeder* (Docket No. 91–699), and thus was misleading; the rule ignores ECAB precedent (including *Reeder*), undermining another section of the Secretary's regulations (20 CFR 10.150);

3. The rule sets an unfortunate precedent for the rest of those sections of the FECA which give discretion to the Secretary; the rule violates the due process rights of claimants.

Each of these arguments will be addressed in turn. First, the commentor contends that the GAO audit should be completed before this rule is made final. The GAO has begun its study of the FECA and its administration by OWCP. While the scope of the study is broad, no aspect of the study requires OWCP to suspend its normal operations or, more particularly, its consideration of the instant regulation. The Department notes, however, that in 1987–88, the GAO conducted a study entitled "Federal Employees' Compensation Act Cost Growth and Workplace Safety", GAO/GGD–89–4 (October 1988). While noting that OWCP maintained no data on lump sum payments, the GAO report expressed some concern that such payments may be "Another reason for the real increase in FECA costs." The final rule in no way conflicts with past GAO findings and there is no indication that lump sum payments are currently being examined by GAO. Therefore, there is no basis for the postponing of this rule until the GAO audit is complete.

Secondly, the commentor attacks the failure of the Department to discuss the Employees' Compensation Appeals Board (ECAB or the Board) decisions in *Billy G. Reeder*. In discussing *Reeder*, the commentor argues first that the Director erred in not referring to the Board's decisions in *Reeder* and that this omission was both unethical and illegal. The second contention is more complex, but (briefly stated) asserts that since the proposed rule is in conflict with the Board's ruling, and the Secretary's regulations at 20 CFR 10.150(b) provide that the Director follow the principles of workers' compensation law as determined by the Board, then proposing rules which are in conflict with Board law *de facto* modified an existing rule in violation of the Administrative Procedures Act. Both contentions are without merit. The comments fail to recognize that at the time the proposed rule was published, the *Reeder* case was still being considered by the Board. Furthermore, the interpretation of the decisions assigned by the commentor is erroneous.

In the first *Reeder* decision, issued July 19, 1991, the Board found that the Director had abused his discretion in denying the lump sum application and remanded the case to the office for a *de novo* decision. The Director filed a timely petition for reconsideration with the Board, which by decision dated November 13, 1991, granted the petition and modified its prior decision. The Director then timely filed another petition for reconsideration, which was not responded to until January 15, 1992. Although the second petition for reconsideration was eventually denied by the Board, at the time the proposed rule was published on December 26, 1991, the Board was still considering the petition for reconsideration in *Reeder*. Discussion in proposed rules of a particular case still pending before the Board would have been inadvisable, and so the Department was silent on this case.

The Department believes that the final rule is fully consistent with the Board's decision in *Reeder*. In *Reeder*, the ECAB held that the Office could not consider factors such as cost to the government and extraordinary circumstances in deciding whether a lump sum payment was in the claimant's best interest. In its Order Denying Petition For Reconsideration, the Board noted that the Office could consider such factors when it was considering, in the first instance, whether to consider the application. See Billy G. Reeder, Docket No. 91–699 (issued July 18, 1991; Order Granting Petition For Reconsideration & Modifying Prior Decision (issued November 13, 1991); Order Denying Petition For Reconsideration (issued January 15, 1992). In a decision issued subsequent to Reeder, the Board stated that the Director was not required by statute, regulation, or Board case law to undertake any development of any application for a lump sum payment or to make any determination on an applicant's best interest merely upon application. See Thelma R. Bushnell, Docket No. 91–1764 (issued April 3, 1992). Promulgating this regulation in no way conflicts with these holdings of the Board.

The commentor also alleges that the Department engaged in criminal activity. These allegations appear mainly to be based on the commentor's belief that the *Reeder* cases were deliberately concealed and thus the proposed rules constituted a fraudulent misrepresentation to the public via an official government publication. As the Department has explained its position that a discussion of the case in the **Federal Register** at a time when a petition for reconsideration was under consideration by the ECAB would have been inadvisable, no further comment on these allegations is necessary.

The third contention made by this commentor is similar to that made by employee unions: that the enactment of this rule would set a "dangerous precedent" for the exercise of discretion granted in other parts of the FECA which would "virtually dismantle" the FECA. As noted earlier, the Department believes that the authority for this action is clear, and has fully explained why this action is appropriate in this matter.

The commentor further contends that the Secretary's failure to exercise discretion under section 8135 is a violation of due process. As previously stated, the Department believes that the promulgation of this regulation constitutes a proper exercise of discretion in describing the manner of payment of compensation benefits.

Conclusion

Based on the reasons set out in the preamble to the proposed rule, as amplified and clarified above in addressing the comments received, the Department has determined to adopt the proposed rule as final. This rule will apply to all pending cases.

Cost Benefit Analysis

The rule should bring no additional costs to the government. The benefits prescribed by the FECA must be paid where appropriate. By making clear that lump sum payment of wage loss benefits will not be considered, considerable administrative savings may be expected.

Classification—Executive Order 12291

The Department of Labor has concluded that the regulatory proposal does not constitute a "major rule" under Executive Order 12291, because it is unlikely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in cost or prices for consumers, individual industries, Federal, state or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The rule applies only to Federal employees, their

families and the Federal agencies which employ them. Accordingly, no regulatory analysis is required.

Paperwork Reduction Act

None.

Regulatory Flexibility Act

The Department believes that the rule will have "no significant economic impact upon a substantial number of small entities" within the meaning of section 3(a) of the Regulatory Flexibility Act, Public Law 96–354, 91 Stat. 1164 (5 U.S.C. 605(b)). The proposed regulations apply primarily to Federal agencies and their employees. No additional burdens are being imposed on small entities. The Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. Accordingly, no regulatory impact analysis is required.

List of Subject in 20 CFR Part 10

Administrative practice and procedure, Claims, Courts, Fraud, Government employees, Health care, Health professions, Law enforcement officers, Peace Corps, Penalties, Reporting and recordkeeping requirements, Volunteers, Wages, Workers' compensation.

For the reasons set out in the preamble, part 10 of chapter I of title 20 of the Code of Federal Regulations is amended as follows:

PART 10—CLAIMS FOR COMPENSATION UNDER THE FEDERAL EMPLOYEES' COMPENSATION ACT, AS AMENDED

1. The authority citation for 20 CFR part 10 continues to read as follows:

Authority: 5 U.S.C. 301, Reorg. Plan No. 6 of 1950, 15 FR 3174, 64 Stat. 1263, 5 U.S.C. 8145, 8149; Secretary's Order 1–89; Employment Standards Order 90–02.

2. Section 10.311 is revised to read as follows:

§ 10.311 Lump-sum awards.

(a) (1) In exercise of the discretion afforded by section 8135(a), the Director has determined that lump-sum payments will no longer be made to individuals whose injury in the performance of duty as a federal employee has resulted in a loss of wage-earning capacity. This determination is based on, among other factors:

(i) The fact that FECA is intended as a wage-loss replacement program;

(ii) The general advisability that such benefits be provided on a periodic basis; and

(iii) The high cost associated with the long-term borrowing that is necessary to pay out large lump sums.

(2) Accordingly, where applications for lump-sum payments for wage-loss benefits under section 8105 and 8106 are received, the Director will not exercise further discretion in the matter.

(b) Notwithstanding the determination set forth in paragraph (a) of this section, a lump sum payment may be made to a claimant whose injury entitles him or her to a schedule award under section 8107. Even under these circumstances, a claimant possesses no absolute right to a lump-sum payment of benefits payable under section 8107, and such a payment may be granted only where the Director determines, acting within his or her discretion, that such a payment is in the claimant's best interest. Lump-sum payments of schedule awards generally will not be considered in the claimant's best interest where the compensation payments are relied upon by the claimant as a substitute for lost wages.

(c) On remarriage before age 55, a surviving spouse entitled to compensation under 5 U.S.C. 8133, shall be paid a lump sum equal to 24 times the monthly compensation payment (excluding compensation payable on account of another individual) to which the surviving spouse was entitled immediately before the remarriage.

Signed at Washington, DC, this 4th day of August 1992.

Lynn Martin,

Secretary of Labor.

[FR Doc. 92–18796 Filed 8–10–92; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 191

The DoD Civilian Equal Employment Opportunity Program

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Final rule.

SUMMARY: The Department of Defense is changing the name of the DoD Handicapped Individuals Program to "the DoD Program for People with Disabilities." In addition, the language in the regulation establishing the DoD Civilian Equal Employment Opportunity Program is being updated to reflect the current usage preference of the disability community. The term "handicap" is being changed to "disability" throughout, except in proper names and titles. Similarly, the term "handicapped individuals" is being changed to "people with disabilities," and the term "handicapped employees" is being changed to "employees with disabilities".

EFFECTIVE DATE: April 17, 1992.

FOR FURTHER INFORMATION CONTACT: Judith C. Gilliom, Office of the Deputy Assistant Secretary of Defense (Civilian Personnel Policy/Equal Opportunity), The Pentagon, Washington, DC 20301–4000. Telephone 703–697–8661.

SUPPLEMENTARY INFORMATION:

This document is not a major rule as defined by E.O. 12291. Its only effect is to update language and citations in the existing regulation. There is effect on the economy, prices, or related matters such as competition and productivity. There is no effect on small entities within the meaning of Public Law 96–354. There are no new information requirements within the meaning of Public Law 96–511. None of the changes are substantive.

List of Subjects in 32 CFR Part 191

Aged, Equal employment opportunity, Government employees, Handicapped, Religious discrimination, Sex discrimination.

Accordingly, 32 CFR part 191 is amended as follows:

PART 191—THE DOD CIVILIAN EQUAL EMPLOYMENT OPPORTUNITY (EEO) PROGRAM

1. The authority citation for part 191 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 113.

§ 191.1 [Amended]

2. Section 191.1 is amended in paragraph (a) by revising "Order ADM 5420.71" to read "Order ADM 5420.71A" and in paragraph (c) by revising "Handicapped Individuals Program (HIP)" to read "Program for People with Disabilities (PPD)."

3. In § 191.3, the definition *Discrimination* is amended by revising "handicap" to read "disability"; by revising the term *Handicapped individual* to read *People with disabilities*, and placing it in alphabetical order and revising the first sentence of the introductory text of that definition; and in the definition *Special Emphasis Program (SEPs)* by revising "handicapped persons" to read "people with disabilities."

§ 191.3 Definitions.

* * * * *

People with disabilities. People who have physical or mental impairments that substantially limits one or more major life activities, has a record of such

impairment, or is regarded as having such an impairment. * * *

* * * * * *

§ 191.4 [Amended]

4. Section 191.4 is amended in paragraphs (b), (c), and (f) by revising "handicapped individuals" to read "people with disabilities" and paragraph (e) by revising "handicap" to read "disability."

§ 191.5 [Amended]

5. Section 191.5 is amended in paragraph (a)(14) by revising "Interagency Committee for Computer Support of Handicapped Employees" to read "Council on Accessible Technology" and "Order ADM 5420.71" to read "Order ADM 5420.71A"; in paragraphs (a)(6), (a)(11), (b)(2), (b)(9), (b)(10), and (b)(13) by revising "handicapped individuals" to read "people with disabilities"; and in paragraph (b)(5) by revising "HIP" to read "PPD."

§ 191.6 [Amended]

6. Section 191.6 is amended in paragraphs (b)(2), (b)(5), (b)(9), (b)(10), (b)(12), and (b)(14) by revising "handicapped individuals" to read "people with disabilities"; paragraphs (b)(3) and (b)(9) by revising "HIP" to read "PPD"; paragraph (b)(12) by revising "National Employ the Handicapped Week" to read "National Disability Employment Awareness Month"; paragraph (b)(13) by revising "handicap" to read "disability"; and paragraph (b)(15) by revising "handicapped employees" to read "employees with disabilities" and by revising "Interagency Committee for Computer Support of Handicapped Employees" to read "Council on Accessible Technology" and "Order ADM 5420.71" to read "Order ADM 5420.71A."

§§ 191.8 and 191.9 [Amended]

7. Sections 191.8(a) and 191.9(b)(2) are amended by revising "handicapped individuals" to read "people with disabilities."

§ 191.9 [Amended]

8. Section 191.9(b)(3) is amended by revising "handicapped employees" to read "employees with disabilities."

Dated: August 5, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-19034 Filed 8-10-92; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Baltimore Regulation 92-05-26]

Safety Zone Regulation: Patapsco River, East Channel, Baltimore, MD

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard Marine Safety Office Baltimore is establishing a safety zone for the 178th Annual Defenders Day Celebration. A shore based artillery unit will be firing mock bombardment charges out over the Patapsco River. Fireworks will be launched from a barge anchored approximately 300 feet east of Fort McHenry Range Front Light, Patapsco River, East Channel, Baltimore, Maryland. The safety zone is necessary to control spectator craft and to provide for the safety of life and property on navigable waters during the event. Entry into the safety zone is prohibited unless otherwise authorized by the Captain of the Port.

EFFECTIVE DATE: This regulation becomes effective on September 13, 1992, at 6 p.m. and terminates that same day at 11 p.m.

FOR FURTHER INFORMATION CONTACT: LT Cynthia L. Stowe, U.S.C.G. Marine Safety Office Baltimore, U.S. Custom House, 40 South Gay Street, Baltimore, Maryland 21202-4022, (410) 962-5105.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, A notice of proposed rulemaking has not been published for this regulation and good cause exists for making it effective in less than 30 days from the date of **Federal Register** publication. Specifically, the sponsor's application to hold the event was not received until July 13, 1992, leaving insufficient time to publish a NPRM in advance of the event. Publishing a NPRM and delaying its effective date would be contrary to the public interest. Immediate action is needed to prevent vessel damage and bodily injury as a result of the fireworks explosives and any concussion injury associated with mock artillery charges.

Drafting Information

The drafters of this regulation are LT Cynthia L. Stowe, project officer for the Captain of the Port, Baltimore, Maryland, and LT Kathleen A. Duignan, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulation

The circumstances requiring this regulation arose on July 13, 1992, when the National Park Service submitted an application to hold a mock bombardment and fireworks display, to take place on September 13, 1992. As part of their application, the National Park Service requested that the Coast Guard provide control of spectator and commercial vessel traffic.

Fireworks will be launched from a barge anchored approximately 300 feet east of Fort McHenry Range Front Light, Patapsco River, East Channel, Baltimore, Maryland. A shore based artillery unit will fire out over the river along the southeast grounds of Fort McHenry. The Safety Zone will consist of a circle, with a radius of 1,000 feet having its center located at Fort McHenry Range Front Light. The safety zone will provide for the safety of life and property during the fireworks display and protect individuals from concussion injury associated with the mock bombardment charges. A portion of the East Channel will be closed during the fireworks display. Since the main shipping channel will not be closed for an extended period, commercial traffic should not be severely disrupted.

Regulatory Evaluation

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165. This regulation is considered not major under Executive Order 12291 and non-significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the emergency rule does not raise sufficient federalism implications to warrant the preparation of a Federal Assessment. This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In conclusion of the foregoing, subpart F of part 165 of title 33, Code of Federal Regulations is amended as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A new § 165.T0549 is added to read as follows:

§ 165.T0549 Safety Zone: Patapsco River, East Channel, Baltimore, Maryland

(a) *Location:* The following area is a safety zone: The waters of the Patapsco River, East Channel, bounded by the arc of a circle with a radius of 1,000 feet around its center located at Fort McHenry Range Front Light.

(b) *Effective Date:* This regulation becomes effective on September 13, 1992, at 6 p.m. and terminates that same day at 11 p.m., unless sooner terminated by the Captain of the Port, Baltimore, Maryland.

(c) *Regulation:*

(1) In accordance with the general regulations in § 165.23, entry into the safety zone is prohibited unless authorized by the Captain of the Port or his designated representative.

(2) The operator of any vessel in the immediate vicinity of this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard Ensign.

(ii) Proceed as directed by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard Ensign.

(3) Any spectator vessel may anchor outside of the regulated area specified in paragraph (a) of this section, but may not block a navigable channel.

(d) *Definitions.* The designated representative of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Baltimore, Maryland to act on his behalf.

(1) The Captain of the Port and the Duty Officer at the Marine Safety Office, Baltimore, Maryland can be contacted at telephone number (410) 962–5105.

(2) The Coast Guard Patrol Commander and each Coast Guard vessel enforcing the safety zone can be contacted on VHF–FM channels 13 and 16.

Dated: July 31, 1992.

R.L. Edmiston,

Captain, U.S. Coast Guard, Captain of the Port, Baltimore, Maryland.

[FR Doc. 92–19079 Filed 8–10–92; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF DEFENSE

Corps of Engineers

Department of the Army

33 CFR Part 222

[ER 1110–2–240]

Engineering and Design; Water Control Management

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Final rule.

SUMMARY: The Army Corps of Engineers is revising 33 CFR 222.7(g)(2) to expand the Corps requirements for public meetings and public involvement in water control issues. Recent Federal statutes relating to public involvement have created a need for updating this regulation.

EFFECTIVE DATE: September 10, 1992.

ADDRESS: HQ, USACE (CECW–EH–W) WASH, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. Charles H. Sullivan, Chief, Water Control/Water Quality Section (202 272–8509).

SUPPLEMENTARY INFORMATION: This final rule updates paragraph (g)(2) of § 222.7, Water Control Management (ER 1110–2–240). The addendum to paragraph (g)(2) delineates the Army Corps of Engineers responsibilities concerning public involvement in developing of modifying water control manuals, especially those parts subject to section 310(b) of the Water Resources Development Act of 1990 (Pub. L. 101–640, 104 Stat. 4639).

Section 310(b) uses the term "reservoir operating manuals." An Army Corps of Engineers water control manual for a given reservoir has two components, one of which is used to operate the reservoir, and the other is administratively or informational in nature. The reservoir operating chapter referred to as the "water control plan" contains the guidelines by which the agency regulates the storage and release of water under all hydrologic conditions ranging from flood to drought. The administrative and informational chapters provide background such as the project's authorization, history, watershed characteristics, pertinent data about project features, the climatic and hydrologic setting of the drainage basin, and chain of command of personnel positions with phone numbers and similar type of non-regulatory information. Changes to the former component of a water control manual that involve "proposed management decisions for operating reservoirs" pursuant to section 310(b) require public participation, but changes to the latter component do not require public participation. Section 310(b) uses the term "public hearing." Conducting public meetings is consistent with the intent of the law to "provide significant public participation."

1. This part is not a major rule within the meaning of E.O. 12291 requiring preparation of a regulatory impact analysis because it will not result in an annual effect on the economy of $100 million or more and it will not result in a major increase in costs or prices.

2. Pursuant to 5 U.S.C. 605(b), I hereby certify that this regulation will not have a significant economic impact on a substantial number of entities.

3. We have determined that a notice of proposed rulemaking in this matter is unnecessary since it involves general statements of policy and agency practice and procedures.

List of Subjects in 33 CFR Part 222

Bridges, Dams, Water Resources, Reservoir, Transportation, Rivers, Fish, Wildlife, Records.

For the reasons set out in the preamble, 33 CFR part 222 is amended as follows:

PART 222—ENGINEERING AND DESIGN

1. The authority citation for 33 CFR part 222 is established to read as follows and authority citations following each section are removed.

Authority: 23 U.S.C. 116(d); delegation in 49 CFR 1.45(b); 33 U.S.C. 467 et seq; 33 U.S.C. 701, 701b, and 701c–1 and specific legislative authorization Acts and Public Laws listed in appendix E of § 222.7.

2. Section 222.7(g)(2) is revised to read as follows:

§ 222.7 Water Control Management (ER 1110–2–240).

* * * * *

(g) * * *

(2) *Public involvement and information*—(i) *Public meeting and public involvement.* The Corps of Engineers will sponsor public involvement activities, as appropriate, to appraise the general public of the water control plan. In developing or modifying water control manuals, the following criteria is applicable.

(A) Conditions that require public involvement and public meetings include: Development of a new water control manual that includes a water control plan; or revision or update of a water control manual that changes the water control plan.

(B) Revisions to water control manuals that are administratively or informational in nature and that do not change the water control plan do not require public meetings.

(C) For those conditions described in paragraph (g)(2)(i)(A) of this section, the Corps will provide information to the public concerning proposed water control management decisions at least 30 days in advance of a public meeting. In so doing, a separate document(s) should be prepared that explains the recommended water control plan or change, and provides technical information explaining the basis for the recommendation. It should include a description of its impacts (both monetary and nonmonetary) for various purposes, and the comparisons with alternative plans or changes and their effects. The plan or manual will be prepared only after the public involvement process associated with its development or change is complete.

(D) For those conditions described in paragraph (g)(2)(i)(A) of this section, the responsible division office will send each proposed water control manual to the Army Corps of Engineers Headquarters, Attn: CECW–EH–W for review and comments prior to approval by the responsible division office.

(ii) *Information availability.* The water control manual will be made available for examination by the general public upon request at the appropriate office of the Corps of Engineers. Public notice shall be given in the event of occurring or anticipated significant changes in reservoir storage or flow releases. The method of conveying this information shall be commensurate with the urgency of the situation and the lead time available.

* * * * *

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 92–18976 Filed 8–10–92; 8:45 am]

BILLING CODE 3710–08–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA–12–13–5502; FRL–4153–1]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision

In the matter of Bay Area Air Quality Management District; Kern County Air Pollution Control District; San Joaquin Valley Unified Air Pollution Control District; South Coast Air Quality Management District; Ventura County Air Pollution Control District.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing the approval of revisions to the California State Implementation Plan (SIP) proposed in the **Federal Register** on March 5, 1992 (57 FR 7900) and on March 6, 1992 (57 FR 8104). The revisions concern rules from the following districts: the Bay Area Air Quality Management District (BAAQMD), the Kern County Air Pollution Control District (KCAPCD), the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD), the South Coast Air Quality Management District (SCAQMD), and the Ventura County Air Pollution Control District (VCAPCD). This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended (CAA or the Act). The revised rules control VOC emissions from several different industries. Both Federal Registers 57 FR 7900 and 57 FR 8104 provided 30-day public comment periods, and EPA received one minor comment on its proposals to approve these revisions. Thus, EPA is finalizing the approval of these revisions into the California SIP under section 110(k)(3) as meeting the requirements of section 110(a) and part D of the CAA.

EFFECTIVE DATE: This action is effective September 10, 1992.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations:

Northern California, Nevada and Hawaii Rulemaking Section (A–5–4), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, DC 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1219 K Street, Sacramento, CA 95814

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109

Kern County Air Pollution Control District, 2700 M Street, Suite 275, Bakersfield, CA 93301

San Joaquin Valley Unified Air Pollution Control District, 1745 West Shaw, Suite 104, Fresno, CA 93711

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765–4182

Ventura County Air Pollution Control District, 702 County Square Drive, Ventura, CA 93003

FOR FURTHER INFORMATION CONTACT: Doris Lo, Northern California, Nevada and Hawaii Rulemaking Section (A–5–4), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1202

SUPPLEMENTARY INFORMATION:

Background

On March 5, 1992 in 57 FR 7900, EPA proposed to approve the following rules into the California SIP: SJVUAPCD's Rule 460.2, Motor Vehicle and Mobile Equipment Refinishing Operations, and KCAPCD's Rule 410.4A, Motor Vehicle and Mobile Equipment Refinishing Operations. Rule 460.2 was adopted by SJVUAPCD on April 11, 1991, and Rule 410.4A was adopted by KCAPCD on May 6, 1991. Both rules were submitted by the California Air Resources Board (CARB) to EPA on May 30, 1991.

On March 6, 1992 in 57 FR 8104, EPA proposed to approve the following rules into the California SIP: BAAQMD's Rule 8–37, Natural Gas and Crude Oil Production Facilities; SCAQMD's Rule 465, Vacuum Producing Devices or Systems; SCAQMD's Rule 1123, Refinery Process Turnarounds; and VCAPCD's Rule 71, Crude Oil and Reactive Organic Compound Liquids. Rule 8–37 was adopted by BAAQMD on October 17, 1990; Rules 465 and 1123 were adopted by SCAQMD on December 7, 1990; and Rule 71 was adopted by VCAPCD on September 11, 1990. VCAPCD's Rule 71 was submitted by CARB to EPA on April 5, 1991, and the other three rules were submitted by CARB to EPA on May 13, 1991.

These rules were submitted in response to EPA's 1988 SIP-Call and the section 182(a)(2)(A) RACT fix-up requirement of the CAA. Both EPA's 1988 SIP-Call and the section 182(a)(2)(A) required nonattainment areas to fix their deficient reasonably available control technology (RACT) rules for ozone in accordance with EPA guidance that interpreted the requirements of the pre-amended Act. Section 182(a)(2)(A) also established a deadline of May 15, 1991 for states to submit corrections of those deficiencies. A detailed discussion of the background for each of the above rules and nonattainment areas is provided in 57 FR 7900 and 57 FR 8104.

EPA has evaluated all of the above rules for consistency with the requirements of the CAA and EPA regulations and EPA interpretation of these requirements as expressed in the various EPA policy guidance documents referenced in 57 FR 7900 and 57 FR 8104.

EPA has found that the rules meet the applicable EPA requirements. A detailed discussion of the rule provisions and evaluations has been provided in 57 FR 7900 and 57 FR 8104 and in technical support documents (TSDs) available at EPA's Region IX office (TSDs dated February 7, 1992 for Rule 460.2 and 410.4A, October 23, 1991 for Rule 8–37, October 23, 1991 for Rule 465, October 23, 1991 for Rule 1123 and October 29, 1991 for Rule 71).

A 30-day public comment period was provided in 57 FR 7900 and 57 FR 8104. EPA received one minor comment from the VCAPCD on Rule 71. VCAPCD commented that an administrative error was made in the documentation for Rule 71 that was submitted to EPA. EPA has evaluated and agrees with VCAPCD's comment. The comment does not effect the EPA's proposal to approve Rule 71 into the SIP.

EPA Action

In today's notice, EPA takes final action to approve the above rules for inclusion into the California SIP. EPA is approving the submittal under section 110(k)(3) as meeting the requirements of section 110(a) and part D of the CAA. This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of VOCs in accordance with the requirements of the CAA.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 13, 1992. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Hydrocarbons, Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the **Federal Register** on July 1, 1992.

Dated: June 18, 1992.

John Wise,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(183)(i)(B)(*2*), (c)(184)(i)(B)(*2*), (c)(184)(i)(c)(*1*), (c)(185)(i)(A)(*3*) and (c)(185)(i)(c)(*2*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(183) * * *

(i) * * *

(B) * * *

(*2*) Rule 71, adopted on September 11, 1990.

(184) * * *

(i) * * *

(B) * * *

(*2*) Rule 465, adopted on December 7, 1990 and Rule 1123, adopted on December 7, 1990.

(C) Bay Area Air Quality Management District.

(*1*) Rule 8–37, adopted on October 17, 1990.

(185) * * *

(i) * * *

(A) * * *

(*3*) Rule 410.4A, adopted on May 6, 1991.

* * * * *

(C) * * *

(*2*) Rule 460.2, adopted on April 11, 1991.

* * * * *

[FR Doc. 92–18298 Filed 8–10–92; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 52

[VA 6–2–5565; A–1–FRL–4193–5]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Withdrawal of Final Rule Pertaining to the Virginia Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of final rulemaking.

SUMMARY: On May 6, 1992, EPA published approval of a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia (57 FR 19378). This revision would have amended the motor vehicle inspection and maintenance (I/M) program in Northern Virginia. The intended effect of the action was to eliminate I/M operating problems identified in a June, 1984 audit of Virginia's program and to provide for the achievement of minimum emission reduction requirements (MERR) for hydrocarbons and carbon monoxide required in the Virginia SIP.

EPA approved this direct final rulemaking without prior proposal because the Agency viewed it as a noncontroversial amendment and anticipated no adverse comments. The final rule was published in the **Federal Register** with a provision for a 30 day comment period. If adverse comments were submitted to EPA within 30 days of publication of the rule in the **Federal Register**, the action would be withdrawn by publishing two notices—one to withdraw the action and a second to announce proposal of a new rulemaking and establishing a public comment period.

Notice of intent to adversely comment was submitted to EPA within the prescribed comment period. Therefore, EPA is withdrawing the May 6, 1992 final rulemaking and is today publishing a notice of proposed rulemaking to incorporate the amendments to Virginia's I/M program.

EFFECTIVE DATE: August 11, 1992.

FOR FURTHER INFORMATION CONTACT: Brian K. Rehn, (215) 597–4554.

SUPPLEMENTARY INFORMATION:

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: July 23, 1992.

Edwin B. Erickson,

Regional Administrator Region III.

PART 52—AMENDED

For the reasons set out in the preamble supbart VV, part 52 of chapter, title 40 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart VV—Virginia

2. Section 52.2420 is amended by removing paragraph (c)(97).

[FR Doc. 92–19060 Filed 8–10–92; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 420

[BPO–102–CN]

RIN 0938–AF59

Medicare Program; Carrier Jurisdiction for Claims for Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) and Other Issues Involving Suppliers, and Criteria and Standards for Evaluating Regional DMEPOS Carriers; Correction

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Correction notice.

SUMMARY: **Federal Register** document 92–14044, published on Thursday, June 18, 1992, beginning on page 27290, amended 42 CFR parts 405, 420, 421, and 424 to modify Medicare rules applicable to claims for durable medical equipment, prosthetics, orthotics and supplies (DMEPOS) covered under Part B of Medicare. The document designated regional carriers to process DMEPOS claims, established certain standards for suppliers who submit DMEPOS claims which included certain supplier disclosure requirements; and established criteria and standards for evaluating the performance of the designated regional DMEPOS carriers. This notice corrects an error made in that document.

EFFECTIVE DATE: This correction is effective August 17, 1992.

FOR FURTHER INFORMATION CONTACT: Gwendolyn Lindsay (410) 966–4673.

SUPPLEMENTARY INFORMATION: In the June 18, 1992 **Federal Register** document 92–14044 that we published as final rule with comment period we failed to take into account a change made to part 420 by a final rule with comment period published on June 12, 1992 in the **Federal Register** at 57 FR 24961. In the definition of "disclosing entity" under § 420.201, we inadvertently omitted text from the June 12, 1992 final rule that included a rural health clinic and a Federally qualified health center as part of this definition.

Accordingly, we are correcting FR doc. 92–14044 as follows:

§ 420.201 [Corrected]

On page 27306, in § 420.201, in the second column, in the third line, "disease facility, or health maintenance" is corrected to read "disease facility, a rural health clinic, a Federally qualified health center, or a health maintenance".

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare Hospital Insurance)

Dated: August 4, 1992.

Neil J. Stillman,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 92–19021 Filed 8–10–92; 8:45 am]

BILLING CODE 4120–01–M

42 CFR Part 493

[HSQ–179–CN]

RIN 0938–AE60

Medicare Program; Medicare and Laboratory Certification Program; Enforcement Procedures for Laboratories

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Correction notice.

SUMMARY: In the February 28, 1992 issue of the **Federal Register** (FR Doc. 92–4050) (57 FR 7218), we established rules for sanctions that HCFA may impose on laboratories that are found not to meet Federal requirements. This notice corrects both typographical and technical errors made in that document.

EFFECTIVE DATE: These regulations are effective on September 1, 1992.

FOR FURTHER INFORMATION CONTACT: Irene Gibson, (410) 966–6768.

SUPPLEMENTARY INFORMATION: On February 28, 1992 we published in the **Federal Register**, at 57 FR 7218, rules which established sanctions that HCFA may impose on laboratories that are found not to meet Federal requirements relating to the Clinical Laboratory Improvement Amendments of 1988 (CLIA). We also published on that date and in that issue of the **Federal Register** two related rules which set forth the test performance requirements for laboratories that are subject to CLIA requirements and established the fees that HCFA charges laboratories for issuance of various CLIA certificates based on test complexity. A number of typographical errors occurred. The complexity and interrelationship of these three documents also resulted in some technical errors and inadvertent omissions in the enforcement regulation. This notice corrects all errors in FR Doc. 92–4050.

I. Explanation of Technical Corrections

In the preamble, the last sentence in the response to comment #21 on page 7224 concerning the phase-in of proficiency testing (PT) was missing several words and did not make sense as written. Our intent was to specify that the phase-in of sanctions against laboratories with unsuccessful participation in PT would apply only to laboratories with noncompliance that does not pose immediate jeopardy. We are adding the date of January 1, 1994 to be consistent with the regulation on test performance requirements (57 FR 7002), which specified January 1, 1994 as the date on which PT requirements will be effective for previously unregulated laboratories. We also are adding January 1, 1993 as the date on which PT requirements for previously regulated laboratories will be effective, because PT enrollment follows a calendar year cycle, and previously regulated laboratories will be expected to be enrolled in PT by this date (a year earlier than for previously unregulated laboratories, since these laboratories are more familiar with PT than previously unregulated laboratories).

Also in the preamble, on page 7226, in the discussion of the phase-in of alternative sanctions for a laboratory with unsuccessful participation in PT, we stated that alternative sanctions will not be imposed at the time of the first citing of unsuccessful participation in PT. We are revising this language to specify that sanctions will be phased in only during a laboratory's first year of PT; in other words, the first series of three consecutive testing events. This serves to offer a one-time "window" through which laboratories may remain operational without sanction if they are out of compliance with CLIA requirements for PT, since they are becoming newly familiar with these requirements. Any subsequent noncompliance may be subject to sanction.

In the response to the comments concerning limitation of certificates

based on the test level rather than the specialty or subspecialty level, on page 7232, we inadvertently referenced procedures at § 493.1832(b)(2). We are removing the phrase "according to the procedures at § 493.1832(b)(2)" because we do not explicitly mention the voluntary cessation of testing of a specific analyte in that section.

In the regulations text, on page 7236, in § 493.2, in the definition of "certificate," we are clarifying that a laboratory may be issued a certificate not only if all CLIA conditions are met, but also if it is noncompliant with one or more conditions, as long as HCFA has imposed an alternative sanction. We are making this change to be consistent with § 493.1814 which permits laboratories with CLIA certificates to continue to operate even if they are noncompliant with one or more conditions, provided an alternative sanction is in place.

On page 7238, in the text of § 493.1809, we are clarifying that a laboratory may receive payment under Medicaid if it holds any type of CLIA certificate (which would include the case in which a laboratory could hold a certificate even if it does not meet all of the applicable CLIA conditions, but has an alternative sanction in place) or is exempt from CLIA by virtue of its being licensed by a State whose licensure program has been approved by the Secretary.

We are also making corrections in the regulations text so that specific terminology more faithfully reflects the underlying statute, to correct obvious typographical errors, and to remove redundancy.

II. Corrections to the Preamble of the February 28, 1992 Final Rule With Comment Period (57 FR 7218)

1. On page 7219, in the first column in the third full paragraph, line 7 is corrected by replacing the word "not" with the word "now".

2. We make the following corrections on page 7220, in the second column in the first paragraph:

(a) Beginning on line 18, the phrase "the effective date of all CLIA requirements, published elsewhere in this issue of the **Federal Register**" is corrected to read "January 1, 1993";

(b) Line 24 is corrected by replacing the phrase "the first citation of" with the phrase "within the first series of three consecutive testing events";

(c) Line 28 is corrected by replacing the word "will" with the word "may".

3. On page 7224, in the first column in the second Response, beginning on line 14, "some prior to the effective date of the applicable PT requirements" is corrected to read "those laboratories that were previously regulated under CLIA are subject to PT requirements as of January 1, 1993. Previously unregulated laboratories will not be required to meet PT requirements until January 1, 1994. In both cases, the first citation of unsuccessful PT participation during the first PT cycle (in other words, the first series of three consecutive testing events) will not result in the imposition of a sanction, unless the noncompliance with CLIA requirements constitutes immediate jeopardy."

4. On page 7225, column three, in the first full Response, beginning on line 1, the first two sentences are corrected to read, "Both this regulation and Regulations Implementing the Clinical Laboratory Improvement Amendments of 1988 (CLIA), identified as HSQ–176–FC, (the rule delineating the conditions that laboratories must meet to operate under CLIA), published today, are effective as specified in the respective preambles. These effective dates will afford the laboratory community ample time to become familiar with these requirements prior to the commencement of inspections under CLIA."

5. On page 7226, column one, line 7, "at the time of the first citing of such unsuccessful participation in proficiency testing." is corrected to read, "as the result of unsuccessful proficiency testing participation within the first series of three consecutive testing events. As always, however, the Secretary will take any action that may be necessary in cases of immediate jeopardy."

8. On page 7227, column two, in the first full Comment, line 3 is corrected by replacing the term "Medicaid" with "Medicare".

9. On page 7232, column two, beginning on line 13, "according to the procedures at § 493.2832(b)(2)" is removed.

III. Corrections to the Regulations Text of the February 28, 1992 Final Rule With Comment Period

PART 493—[CORRECTED]

§ 493.2 [Corrected]

1. We make the following corrections to § 493.2:

(a) On page 7236, column two, in the definition of *CLIA certificate*, in paragraph (1) under *certificate*, "requirements." is changed to read "requirements, or to be out of compliance with one or more condition level requirements and has an alternative sanctions imposed."

(b) On page 7236, column three, in the definition of *Immediate jeopardy*, "to the public health" is added after the word "hazard".

(c) On page 7236, column three, in the definition of *Party*, "or HCFA or the OIG," is corrected to read "by HCFA or the OIG,".

(d) On page 7237, column one, in the definition of *Unsuccessful participation in proficiency testing*, "micobacteriology" is corrected to read "mycobacteriology".

§ 493.1804 [Corrected]

2. On page 7237, column three, in § 493.1804(c)(1), "in lieu of the principal sanctions" is corrected to read "in lieu of, or in addition to principal sanctions".

§ 493.1809 [Corrected]

3. On page 7238, column two, in § 493.1809, "meets CLIA conditions." is corrected to read "has a CLIA certificate or is licensed by a State whose licensure program has been approved by the Secretary under this part."

§ 493.1826 [Corrected]

4. On page 7239, column three, in § 493.1826(a)(1)(ii), "Chooses to agree" is corrected to read "Agrees".

§ 493.1834 [Corrected]

5. On page 7240, column two, in § 493.1834(b), "civil money penalty in lieu of" is corrected to read "civil money penalty in lieu of, or in addition to".

§ 493.1844 [Corrected]

6. On page 7242, column two, in § 493.1844(c)(1), "subparts G through O" is corrected to read "subparts H, J, K, M, P, and Q".

Authority: Section 1102 of the Social Security Act (42 U.S.C. 1302).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: August 4, 1992.

Neil J. Stillman,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 92–18966 Filed 8–10–92; 8:45 am]

BILLING CODE 4120–01–M

FEDERAL MARITIME COMMISSION

46 CFR Parts 520, 550, and 580

[Docket No. 92–26]

Filing of Tariffs by Terminal Barge Operators in Pacific Slope States

AGENCY: Fedeal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission removes 46 CFR part 520, Filing of Tariffs by Terminal Barge

Operators in Pacific Slope State, and amends 46 CFR parts 550 and 580 to exempt certain marine terminal barge operators from the tariff filing requirements of the Shipping Act, 1916, and the Shipping Act of 1984, inasmuch as such filing requirements have become obsolete.

EFFECTIVE DATE: August 11, 1992.

FOR FURTHER INFORMATION CONTACT: Bryant L. VanBrakle, Director, Bureau of Tariffs, Certification and Licensing, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573, (202) 523–5796.

SUPPLEMENTARY INFORMATION: The Federal Maritime Commission ("Commission") administers, *inter alia*, section 3 of the Shipping Act, 1916 ("1916 Act"), 46 U.S.C. app. 804 ("Section 3"). Section 3 requires the filing of tariffs by certain terminal barge operators in Pacific Slope States.[1] Section 3 was added to the 1916 Act to clarify the jurisdictional roles of the Commission and the Interstate Commerce Commission concerning barge movements on one particular inland waterway.

The Commission's regulations implementing section 3 are at 46 CFR part 520. In general terms, section 3 and these regulations require tariffs to be filed by terminal barge operators in Pacific Slope States moving containers or containerized cargo between points in the United States, on the one hand, and points in foreign countries or non-contiguous political jurisdictions of the United States, on the other.

Part 520 has been in effect since 1975. There is, however, no record of any recent filing of tariffs thereunder.

The Commission initiated this proceeding by publishing a Notice of Proposed Rulemaking ("NPR") in the **Federal Register** on June 4, 1992 (57 FR 23564). The NPR solicited comments on a proposal to remove 46 CFR part 520 and to provide terminal barge operators who may be subject to Section 3 an exemption under 46 CFR Parts 550 and 580 from the tariff filing requirments of the 1916 Act, and the Shipping Act of 1984 ("1984 Act"), 46 U.S.C. app. 1701 *et seq.*[2] No comments were received on the NPR.

Section 35 of the 1916 Act, 46 U.S.C. app. 833a, and section 16 of the 1984 Act, 46 U.S.C. app. 1715, provide that the Commission may by order or rule exempt for the future any specified activity of persons subject to the 1916 Act or the 1984 Act from any requirement of the 1916 Act, the 1984 Act, or the Intercoastal Shipping Act, 1933, 46 U.S.C. app. 843 *et seq.*, where the Commission finds that such exemption will not substantially impair effective regulation by the Commission, be unjustly discriminatory, result in a substantial reduction in competition (1984 Act only) or be determinal to commerce. The Commisson finds that the exemptions provided for in the proposed rule will meet these criteria.

The Commission is therefore adopting the proposed rule as its final rule in this matter and is thus removing Part 520 and amending 46 CFR parts 550 and 580 to exempt terminal barge operators in Pacific Slope States from filing tariffs for the services provided under the conditions set forth in section 3.[3]

Although the Commission, as an independent regulatory agency, is not subject to Executive Order 12291, dated February 17, 1981, it nonetheless has reviewed the rule in terms of this Order and has determined that this rule is not a "major rule" because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effect on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Federal Maritime Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that this Final Rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units, and small governmental organizations. The final rule provides for an exemption from a filing requirement that appears to have become obsolete.

This rule does not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1980, as amended. Therefore, OMB review is not required.

List of Subjects

46 CFR Part 520

Freight, Maritime carriers, Reporting and recordkeeping requirements.

46 CFR Part 550

Maritime carriers, Reporting and recordkeeping requirements.

46 CFR Part 580

Cargo; Cargo vessels; Freight; Exports; Harbors; Imports; Maritime carriers, Rates; Reporting and recordkeeping requirements; Surety bonds; Water carriers; Water transportation.

Therefore, pursuant to 5 U.S.C. 553; sections 3, 18(a) and 43 of the Shipping Act, 1916, 46 U.S.C. app. 804, 817(a) and 841a; section 2 of the Intercoastal Shipping Act, 1933, 46 U.S.C. app. 844; and sections 8, 10, 11, 12, 13, 17 and 23 of the Shipping Act of 1984, 46 U.S.C. app. 1707, 1709, 1710, 1711, 1712, 1716 and 1722; the Commission renames part 520, and amends parts 550 and 580 of Title 46 of the Code of Federal Regulations as follows:

PART 520—[REMOVED]

1. Part 520 is removed.

PART 550—[AMENDED]

1. The authority citation for part 550 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 812, 814, 815, 817, 820, 833a, 841a, 843, 844, 845, 845a, 845b, and 847.

2. Section 550.1(a)(9) is added to read as follows:

§ 550.1 Exemptions.

(a) * * *

(10) Transportation provided by terminal barge operators in Pacific Slope

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[1] Section 3 provides, in pertinent part:

Notwithstanding part III of the Interstate Commerce Act, as amended (49 U.S.C. 901 et seq.), or any other provision of law, rates and charges for the barging and airfreighting of containers and containerized cargo by barge between points in the United States, shall be filed solely with the Federal Maritime Commission in accordance with rules and regulations promulgated by the Commission where (a) the cargo is moving between a point in a foreign country or a non-contiguous State, territory, or possession and a point in the United States, (b) the transportation by barge between points in the United States is furnished by a terminal operator as a service substitute in lieu of a direct vessel call by the common carrier by water transporting the containers or containerized cargo under a through bill of lading, (c) such terminal operator is a Pacific Slope State, municipality, or other public body or agency subject to the jurisdiction of the Federal Maritime Commission, and the only one furnishing the particular circumscribed barge service in question as of the date of enactment thereof, and (d) such terminal operator is in compliance with the rules and regulations of the Federal Maritime Commission for the operation of such barge service. The terminal operator providing such services shall be subject to the provisions of the Shipping Act, 1916.

[2] The Commission's regulations for the filing of tariffs in the domestic offshore commerce of the United States are at 46 CFR 550, while the regulations for tariffs in the foreign commerce are at 46 CFR 580.

[3] In the near future this final rule will be incorporated into new Part 514, which, when finalized, will provide for the Automated Tariff Filing and Information system. See §§ 514.1(c)(3)(ii) and 514.3(a)(7) of the proposed rule of September 9, 1991, 56 FR 46055 and 46061.

States barging containers and containerized cargo by barge between points in the United States where:

(i) The cargo is moving between a point in a foreign country or a non-contiguous State, territory, or possession and a point in the United States;

(ii) The transportation by barge between points in the United States is furnished by a terminal operator as a service substitute in lieu of a direct vessel call by the common carrier by water transporting the containers or containerized cargo under a through bill of lading; and

(iii) Such terminal operator is a Pacific Slope State, municipality, or other public body or agency subject to the jurisdiction of the Federal Maritime Commission, and the only one furnishing the particular circumscribed barge service in question as of January 2, 1975.

* * * * *

PART 580—[AMENDED]

1. The authority citation for part 580 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1702–1705, 1707, 1709, 1710–1712, 1714–1716, 1718, and 1722.

2. Section 580.1(c)(9) is added to read as follows:

§ 580.1 Exemptions and exclusions.

* * * * *

(c) * * *

(9) Transportation provided by terminal barge operators in Pacific Slope States barging containers and containerized cargo by barge between points in the United States where:

(i) The cargo is moving between a point in a foreign country or a non-contiguous State, territory, or possession and a point in the United States;

(ii) The transportation by barge between points in the United States is furnished by a terminal operator as a service substitute in lieu of a direct vessel call by the common carrier by water transporting the containers or containerized cargo under a through bill of lading; and

(iii) Such terminal operator is a Pacific Slope State, municipality, or other public body or agency subject to the jurisdiction of the Federal Maritime Commission, and the only one furnishing the particular circumscribed barge service in question as of January 2, 1975.

* * * * *

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92–19015 Filed 8–10–92; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 91–140, FCC 92–351]

Radio Rules and Policies

AGENCY: Federal Communications Commission.

ACTION: Final rule; deferral of effective date.

SUMMARY: This action defers the effective date of the rule changes in the Report and Order in MM Docket No. 91–140, 57 FR 18089 (April 29, 1992). Various parties requested that the effective date adopted in the Report and Order be deferred or stayed for 60 days or pending action on petitions for reconsideration. The Commission agrees with the parties' contention that it could be disruptive to the industry and the public for the new rules to take effect before reconsideration has been completed. Therefore, the August 1, 1992 effective date of rules adopted in the Report and Order is deferred pending action on the petitions for reconsideration.

EFFECTIVE DATE: July 30, 1992.

FOR FURTHER INFORMATION CONTACT: Jane Halprin, Mass Media Bureau, Policy and Rules Division, (202) 632–7792.

SUPPLEMENTARY INFORMATION:

Order Deferring Effective Date

Adopted: July 30, 1992.

Released: July 30, 1992.

By the Commission:

1. On April 10, 1992, the Commission released a Report and Order in the above captioned proceeding. Various parties, including Nashville Partners, L.P., National Association of Black Owned Broadcasters, National Black Media Coalition, Telecommunications Research and Action Center, and KVEN Broadcasting Corporation have requested that the effective date of the rule changes adopted in that Report and Order be deferred or stayed for 60 days or pending action on petitions for reconsideration.

2. We agree with the parties' contention that it could be disruptive to the industry and the public for the new rules to take effect before reconsideration has been completed. Good cause accordingly exists for delaying the effective date of the new rules and the filing of applications for the acquisition of stations that could be granted only under the new rules. To achieve the earliest possible benefits from the new rules, we intend to act promptly on the petitions for reconsideration.

3. Accordingly, *it is ordered*, That the August 1, 1992, effective date of the rules adopted in the Report and Order in Docket 91–140, 7 FCC Rcd 1755 (1992), is deferred pending action on the petitions for reconsideration of that Report and Order.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92–18951 Filed 8–10–92; 8:45 am]

BILLING CODE 6712–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1063

[Ex Parte No. MC–200]

Special Transportation Arrangements for Passengers With Disabilities; National Bus Traffic Association, Inc., Petition for Rulemaking

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: The Commission adopts final rules, removing regulations governing transportation of passengers with disabilities that have been rendered obsolete by enactment of the Americans with Disabilities Act (ADA).

EFFECTIVE DATE: September 10, 1992.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder (202) 927–5610 or James L. Brown (202) 927–5303. [TDD for hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: On November 5, 1991 (56 FR 56490), the Commission published a proposed rule in this proceeding. The Commission's decision contains additional information. To obtain a copy of the decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD Services: (202) 927–5721.]

Environmental and Energy Consideration

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Regulatory Flexibility Analysis

We certify that this action will have no significant negative impact on small

businesses and other small organizations. All significant burdens relevant to this action are imposed by statute in the ADA (Pub. L. 101-336). This action eliminates conflicting, obsolete, and redundant regulations, dealing with matters now within the jurisdiction of the U.S. Department of Justice and the U.S. Department of Transportation.

List of Subjects in 49 CFR Part 1063

Aged, Blind, Buses, Handicapped, Motor carriers.

Decided: July 28, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioner Simmons, Phillips, and Emmett.

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 1063, of the Code of Federal Regulations, is amended as follows:

PART 1063—ADEQUACY OF INTERCITY MOTOR COMMON CARRIER PASSENGER SERVICE

1. The authority citation for part 1063 is revised to read as follows:

Authority: 5 U.S.C. 553 and 559 and 49 U.S.C. 10102, 10321, 10701, 10702-10705, 10708, 10721, 10722, 10723, 10724, 10730, 10741, 10761, 10762, 10764, 10922, 11101, 11141-11145, 11701, 11702, 11707, 11708, 11901, 11904, 11906, 11909, 11910, and 11914.

2. Section 1063.8 is revised to read as follows:

§ 1063.8 Transportation of passengers with disabilities.

Service provided by a carrier to passengers with disabilities is governed by the provisions of 42 U.S.C. 11201 *et seq.*, and regulations promulgated thereunder by the Secretary of Transportation (49 CFR parts 27, 37, and 38) and the Attorney General (28 CFR part 36), incorporating the guidelines established by the Architectural and Transportation Barriers Compliance Board (36 CFR part 1191).

[FR Doc. 92-19051 Filed 8-10-92; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 920412-2112]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Inseason adjustments.

SUMMARY: NMFS announces that the recreational salmon fishery in the three subareas from Cape Alava, Washington, to Cape Falcon, Oregon, will be open from 0 to 200 miles off shore beginning August 2, 1992. The Director, Northwest Region, NMFS (Regional Director), has determined that the preseason area restrictions (open only inside 6 miles between Cape Alava and Leadbetter Point, Washington, and open only inside 3 miles between Leadbetter Point, Washington, and Cape Falcon, Oregon) should be rescinded because the preseason objectives of dampening catch rates to extend the fishing season have been met. These adjustments are intended to provide additional fishing opportunity to recreational fishermen and maximize the harvest of chinook and coho salmon without exceeding the ocean share allocated to the recreational fishery in these subareas.

DATES: Effective at 0001 hours local time, August 2, 1992. Actual notice to affected fishermen was given prior to that time through a special telephone hotline and U.S. Coast Guard Notice to Mariners broadcasts as provided by 50 CFR 661.23. Comments will be accepted through August 26, 1992.

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way NE., BIN C15700-Bldg. 1, Seattle, WA 98115-0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the office of the NMFS Northwest Regional Director.

FOR FURTHER INFORMATION CONTACT: Willilam L. Robinson at (206) 526-6140.

SUPPLEMENTARY INFORMATION: In its emergency interim rule and notice of 1992 management measures (57 FR 19388, May 6, 1992), NMFS announced that the 1992 recreational fishery in the three subareas between Cape Alava, Washington, and Cape Falcon, Oregon, would be subject to the following area restrictions: (1) From Cape Alava to the Queets River, Washington, open only inside 6 miles, (2) from the Queets River to Leadbetter Point, Washington, open only inside 6 miles, and (3) from Leadbetter Point, Washington, to Cape Falcon, Oregon, open only inside 3 miles.

Based on the best available information through July 26, 1992, recreational catches as percentages of the quotas are as follows: 23.2% of the overall chinook salmon quota north of Cape Falcon; for the Cape Alava to Queets River subarea—30.9% of the subarea quota; for the Queets River to Leadbetter Point subarea—19.6% of the subarea quota; and for the Leadbetter Point to Cape Falcon subarea quota—63.2% of the subarea quota. The preseason objectives for implementing the area closures included reducing catch per unit of effort and extending the fishing season for as long as possible. Recreational fishing representatives expressed their concerns that these objectives have been met and that additional fishing opportunity should be provided to recreational fishermen to increase access to coho and chinook salmon thereby maximizing the harvest of the remaining quotas. Therefore, the recreational fishery in the three subareas from Cape Alava, Washington, to Cape Falcon, Oregon, will be open from 0 to 200 miles off shore effective 0001 hours local time, August 2, 1992. Modifications of boundaries and closed areas are authorized by regulations at 50 CFR 661.21(b)(1)(v). All other restrictions that apply to this fishery remain in effect as announced in the notice of 1992 management measures (57 FR 19388), including the closure of

Conservation Zone 1 at the Columbia River mouth.

In accordance with the inseason notice procedures of 50 CFR 661.23, actual notice to fisherman of this action was given prior to 0001 hours local time, August 2, 1992, by telephone hotline number (206) 526–6667 or (800) 662–9825 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF–FM and 2182 KHz.

The Regional Director consulted with representatives of the Pacific Fishery Management Council, the Washington Department of Fisheries, and the Oregon Department of Fish and wildlife regarding these adjustments affecting the recreational fishery between Cape Alava and Cape Falcon. The States of Washington and Oregon will manage the recreational fishery in State waters adjacent to this area of the exclusive economic zone in accordance with this Federal action. This action does not apply to treaty Indian fisheries or to other fisheries that may be operating in other areas.

Because of the need for immediate action, the Secretary of Commerce has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment.

Classification

This action is authorized by 50 CFR 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 5, 1992.

Joe P. Clem,

Acting Director of Office Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–19016 Filed 8–10–92; 8:45 am]

BILLING CODE 3510–22–M

National Oceanic and Atmospheric Administration (NOAA)

50 CFR Part 672

[Docket No. 911176–2018]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting the directed fishery for groundfish by vessels using trawl gear, except for pollock with pelagic trawl gear, in the Gulf of Alaska (GOA). This action is necessary because the third seasonal allocation of Pacific halibut prohibited species catch (PSC) established for trawl gear in the GOA has been caught.

EFFECTIVE DATES: Effective 12 noon, Alaska local time (A.l.t.), August 5, 1992, until 12 noon, A.l.t., September 30, 1992.

FOR FURTHER INFORMATION CONTACT: David R. Cormany, Resource Management Specialist, Fisheries Management Division, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the exclusive economic zone of the GOA is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the GOA (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

The final notice of 1992 initial specifications for the GOA (57 FR 2844, January 24, 1992) established the 1992 Pacific halibut PSC limit for trawl gear at 2,000 metric tons (mt) and set seasonal allocations as follows:

First—January 1 through March 31—600 mt;
Second—April 1 through June 30—600 mt;
Third—July 1 through September 29—400 mt; and
Fourth—September 30 through December 31—400 mt

The Director of the Alaska Region, NMFS, has determined, in accordance with § 672.20(f)(1)(i), that trawl vessels in the GOA have caught the third seasonal bycatch of Pacific halibut. Therefore, NMFS is prohibiting directed fishing for groundfish by vessels using trawl gear, except for pollock with pelagic trawl gear when that directed fishery is open, in the GOA from 12 noon, A.l.t., August 5, 1992, through 12 noon, A.l.t., September 30, 1992.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

Classification

This action is taken under 50 CFR 672.20 and is in compliance with E.O. 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

(Authority: 16 U.S.C. 1801 *et seq.*)

Dated: August 5, 1992.

Joe P. Clem,

Acting Director of Office Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–18969 Filed 8–5–92; 8:45 am]

BILLING CODE 3510–22–M

50 CFR Part 663

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency interim rule; extension of effective date; correction.

SUMMARY: NMFS corrects an error in the preamble to the extension of the emergency interim rule, which extends for another 90 days the effective date of the emergency interim rule to allocate Pacific whiting between vessels that deliver to shoreside and to at-sea processors, published July 21, 1992 (57 FR 32181).

FOR FURTHER INFORMATION CONTACT: Robert Gorrell at 301–713–2341.

SUPPLEMENTARY INFORMATION: In the emergency rule extension document 92–17113 beginning on page 31281 in the issue of Tuesday, July 21, 1992, make the following correction:

On page 32181, in the third column, under the heading **"DATES"**, on the second line, "October 19" should read "October 14".

Dated: July 31, 1992.

Joe P. Clem,

Acting Director of Office, Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–18990 Filed 8–10–92; 8:45 am]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 57, No. 155
Tuesday, August 11, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM92-9-000]

Regulations Governing Blanket Marketer Sales Certificates

August 3, 1992.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) proposes a rule that would issue blanket certificates of public convenience and necessity authorizing jurisdictional gas sales for resale at market negotiated rates to all persons who are not interstate pipelines. The authorization granted by this rule will become effective for an affiliated marketer when its affiliated pipeline's Order No. 636 compliance filing is approved by the Commission.

DATES: Comments must be in writing and received by the Secretary of the Commission on or before September 24, 1992. Commenters should file an original and fourteen copies.

ADDRESSES: All filings should refer to Docket No. RM92-9-00 and should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Jeffrey A. Gollomp, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208-1022.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during business hours in room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208-1397. To access CIPS, set your communications software to use 300, 1200, or 2400 baud, full duplex, no parity, 9 data bits, and 1 stop bit. The full text of this notice will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is proposing a rule that would issue blanket certificates of public convenience and necessity authorizing jurisdictional gas sales for resale at market negotiated rates, with pregranted abandonment, to all persons who are not interstate pipelines. The proposed rule would complement the regulations recently promulgated by the Commission's Order No. 636,[1] further fostering a competitive market where merchants of natural gas are influenced by market forces. In addition, the proposed rule advances those objectives previously delineated by the Commission in orders granting marketing certificates, *e.g.*, facilitating the sale of surplus gas that might otherwise be shut-in; giving natural gas producers broader access to markets; increasing pipeline throughput; and providing potential buyers with alternative supply sources.[2]

In Order No. 636 the Commission asserted that one of the purposes of that rule was "to enable the [open-access interstate] pipelines to compete directly with *other gas sellers* on the same terms at prices determined in a competitive market." [3] The Commission found that the "promotion of competition among gas suppliers will benefit all gas consumers and the nation by 'ensur[ing] an adequate and reliable supply of [clean and abundant] natural gas at the lowest reasonable price'." [4] To that end, Order No. 636 issues "pipelines holding a blanket transportation certificate under Subpart G of Part 284 of the Commission's regulations, or performing transportation under Subpart B, a blanket certificate authorizing firm and interruptible sales for resale * * * at prices determined in competitive market." [5]

While Order No. 636 spoke to the restructuring of the natural gas industry as a whole, its provisions pertain specifically to open-access interstate pipelines. The rule proposed in this notice concerns the "other gas sellers" alluded to above. In issuing blanket sales certificates as proposed in this notice, the Commission will place gas merchants who are not interstate pipelines on an equal footing with the interstate pipeline merchants afforded blanket sales certificates pursuant to Order No. 636. Thus, the goal of the proposed rule—in conjunction with the regulations promulgated in Order No. 636—is to provide the "level playing field" for all merchants of natural gas that the Commission continually strives to promote. Further, and most importantly, the proposed rule will foster a truly competitive national wellhead market in which purchasers of natural gas will have access to multiple sources of natural gas and the opportunity to make gas purchasing decisions in accord with market conditions. In Order No. 636-A, addressed contemporaneously herewith in Docket No. RM91-11-002 *et al.*, we reaffirmed, *inter alia*, that our "policy of relying, to the maximum extent possible, on competitive market forces to balance the supply and demand for natural gas at reasonable prices should be extended to all sales markets." [6] That policy is

[1] Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, 57 FR 13267 (April 16, 1992), III FERC Stats. & Regs. Preambles ¶ 30,939 (April 8, 1992).

[2] See footnotes 13-18, *infra*.

[3] Order No. 636, 57 FR 13267, at 13295 (emphasis added).

[4] *Id.*, at 13268 (citing S. Rep. No. 39, 101st Cong., 1st Sess., at p. 1 (1989) and H.R. Rep. No. 29, 101st Cong., 1st Sess., at p. 2 (1989).

[5] *Id.*, at 13295.

[6] Order No. 636-A, Slip Op. at page 252.

equally tenable in this Notice of Proposed Rulemaking and forms the basis of our proposal to issue the subject certificates authorizing sales of natural gas at market negotiated rates.

The proposed rule's blanket certificates would be limited jurisdiction certificates, which would not subject the holders of such certificates to any other regulation under the Natural Gas Act jurisdiction of the Commission by virtue of transactions under the certificate.

II. Background

On April 8, 1992, the Commission issued Order No. 636. The conditions and circumstances leading to the Commission's adoption of Order No. 636 are the same ones prompting the Commission's actions herein. Because this background was comprehensively laid out in the Preamble to Order No. 636, it will not be repeated verbatim in this notice, except to the extent it specifically relates to the marketing of natural gas. However, suffice it to say that Order No. 636—upon its implementation—will fundamentally change the natural gas industry by causing open-access pipelines to unbundle their sales service from their transportation services such that the open-access interstate pipelines' role in the industry will be distinctly two-fold: that of a merchant of natural gas and of a transporter of natural gas. This dichotomy of roles on the part of the pipelines creates a wholly distinct industry as to interstate gas sales for resale.

That facet of the natural gas industry involving the marketing of gas for resale—and the Commission's issuance of certificates authorizing such sales—has burgeoned due, in part, to (1) the Federal court holding in *Maryland People's Counsel* v. *F.E.R.C.*,[7] (2) the issuance of Order No. 436,[8] and (3) the advent and increased use of new gas sources,[9] *e.g.*, imported natural gas and liquefied natural gas.

In *Maryland People's Counsel*, the court rendered invalid the basis for the Commission's authorization of "special marketing programs" (SMP). In general terms, these programs entailed an agreement by a pipeline and its producers to amend high-priced gas purchase contracts entered into by the parties prior to the NGPA's partial wellhead decontrol.[9] These agreements permitted producers to sell committed gas elsewhere at current market prices. In return, the pipeline would receive a credit against its purchase obligations, thus providing the pipeline with a measure of "take-or-pay" relief.[10] The problem with these programs, as the court viewed them, was the discriminatory and anti-competitive component of the SMP which provided for the exclusion of the pipeline's "core market" from the category of authorized purchasers of released gas under the SMP.

Subsequent to *Maryland People's Counsel*, the Commission issued the first marketing certificate resembling the currently effective marketing certificates in *Tenneco Oil Company, et al.*[11] The Commission issued this post-*Maryland People's Counsel* marketing certificate to be consistent with the then new Order No. 436 and its nondiscriminatory, open access provisions.

As was pointed out in Order No. 636, Order No. 436 succeeded in developing "an active and viable spot market" for gas and facilitating the transformation of the pipelines' role "from primarily merchants of natural gas * * * to both merchants of natural gas and nondiscriminatory transporters of natural gas owned by others."[12] By affording non-pipeline merchants of gas open access to transportation service on pipelines holding blanket certificates, Order No. 436 brought about an increase in the number of entities seeking authorization to market gas. Also, with the rise of gas imports and use of LNG peak shaving facilities came the demand for certificate authorization to cover the resale of these additional resources.

The Present Status of the Commission's Marketing Authorizations

In issuing marketing certificates pursuant to section 7 of the Natural Gas Act (NGA) in response to individual applications for certificates, the Commission has, heretofore, specifically tailored such authorizations to the marketers' request. Therefore, the marketing certificate authorizations have been characterized by the specific types of natural gas sought to be sold. These categories of gas include (1) imported gas including liquefied natural gas (LNG),[13] (2) surplus gas sold by interstate pipelines on an interruptible basis (ISS gas),[14] (3) gas purchased from intrastate pipelines and local distribution companies (LDC),[15] (4) gas purchased from interstate pipelines under case specific authorizations,[16] and (5) gas purchased from industrial and congeneration facilities.[17]

In most cases the Commission issued authority to sell "all Natural Gas Policy Act (NGPA) categories of gas subject to the Commission's NGA jurisdiction."[18] This broad category of gas refers to gas which is currently subject to Title I of the Natural Gas Policy Act of 1978 (NGPA) and which has not been removed from the Commission's NGA jurisdiction by section 601 of the NGPA.[19] Briefly stated, the NGPA removed from the Commission's NGA jurisdiction certain categories of wholesale gas. While creating statutory rates for other categories of wholesale gas. Collectively, these wholesale transactions are labeled in section 2(21) of the NGPA as "first sales" and, generally, refer to gas sale[s] that occur prior to a pipeline's receipt of said gas. However, pursuant to the Natural Gas Wellhead Decontrol Act of 1989, all remaining "first sales" of gas subject to the NGA will be exempted from price controls by January 1, 1993.[20]

III. Proposed Rule

As reflected above, the Commission's case specific treatment of marketing certificates offers an array of jurisdictional gas categories that has the effect—from a regulatory perspective (in

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[7] 761 F.2d 768 (D.C. Cir. 1985).

[8] Regulations of Natural Gas Pipelines After Partial Wellhead Decontrol. Order No. 436, 50 FR 42408 (October 18, 1985), FERC Stats. & Regs. (Regulations preambles 1982–1985) ¶ 30,665 (1985), *vacated and remanded*, Associated Gas Distributors v. FERC, 824 F. 2d 981 (D.C. Cir. 1987), *cert. denied*, 485 U.S. 1006 (1988), *readopted on an interim basis*, Order No. 500, 52 FR 30334 (Aug. 14, 1987), FERC Stats. & Regs. (Regulations Preambles, 1986–1990) ¶ 30,761 (1987), *remanded*, American Gas Association v. FERC, 888 F.2d 136 (D.C. Cir. 1989), *readopted*, Order No. 500–H, 54 FR 52344 (Dec. 21, 1989), FERC Stats. & Regs. (Regulations preambles, 1986–1990) ¶ 30,867 (1989), *reh'g granted in part and denied in part*, Order No. 500–I, 55 FR 6605 (Feb. 26, 1990 FERC Stats. & Regs. (Regulations Preambles 1986–1990) ¶ 30,880 (1990), *aff'd in part and remanded in part*, American Gas Association v. FERC, 912 F.2d 1496 (D.C. Cir. 1990), *cert. denied*, 111 S. Ct. 957 (1991).

[9] For examples of SMPs see Yankee Resources, Inc., 30 FERC ¶ 61,201 (1985); Tenneco Oil Company, *et al.*, 28 FERC ¶ 61,383 (1984).

[10] Yankee Resources, 30 FERC ¶ 61,201, at p. 61,405.

[11] 33 FERC ¶ 61,134 (1985).

[12] Order No. 636, 57 FR at 13271.

[13] See Salmon Resources Ltd., *et al.*, 50 FERC ¶ 61,101 (1990), *rehg denied* 51 FERC ¶ 61,148 (1990); Pan National Gas Sales, Inc., 49 FERC ¶ 61,199 (1989).

[14] See ANR Supply Company, *et al.*, 50 FERC ¶ 61,422 (1990); Vesta Energy Company, 53 FERC ¶ 61,242 (1990).

[15] See LaSER Marketing Company, *et al.*, 54 FERC ¶ 61,362 (1991).

[16] See Providence Gas Company and Prov Energy Investments, Ltd., *et al.*, 57 FERC ¶ 61,102 (1991).

[17] See Western Gas Marketing, Inc., *et al.*, 58 FERC ¶ 61,365 (1992).

[18] See Entrade Corporation, *et al.*, 38 FERC ¶ 61,344 (1987).

[19] 15 U.S.C. 3301–3432.

[20] Natural Gas Wellhead Decontrol Act of 1989, Public Law No. 101–60, 103 Stat. 157 (1989).

the Order No. 636 era}—of creating an unnecessary index of authorizations. Therefore, to simplify the regulatory scheme for gas sales, the proposed rule will unify the categories of gas subject to the marketing certificates and refer to them as "all gas subject to the Commission's jurisdiction." [21]

In addition to the various categories of gas subject to the marketing certificate authorizations, the applicants for marketing certificates have also been varied and have included end-users; local distribution companies (LDC); intrastate pipelines; affiliates of end-users, LDCs, or intrastate pipelines; producers, and marketers. The proposed rule will unify this group of applicants under the generic heading of "all persons who are not natural gas interstate pipelines." Because the proposed rule provides that affiliated marketers will receive their blanket certificates contingent upon their affiliated pipelines coming into full compliance with Order No. 636, marketers who are affiliated with non-open access interstate pipelines not subject to Order No. 636 are removed from the class of persons eligible for blanket marketer certificates issued by this proposed rule.

Of particular note in the proposed rule is the removal of the Commission's distinction between those marketers affiliated with open access interstate pipelines and independent or nonaffiliated marketers. The Commission's practice has been to limit the term of the affiliated marketers' blanket certificates to one year or eighteen months in order to enable the Commission to periodically review the pipeline-marketing affiliate relationship to detect anticompetitive practices. The term limitation on marketing affiliate certificates stemmed from the Commission's pre-Order No. 636 concern that pipelines affiliated with marketers would afford these marketers an undue preference in terms of transportation service.[22] Similarly, the Commission was concerned that the affiliated marketer could favor its affiliated interstate pipeline(s) by giving gas sales preferences to purchasers who would utilize the pipeline's transportation service.[23] In both scenarios, the Commission's concern was that a pipeline and its marketing affiliate could act in concert to benefit the corporate whole, and in so doing, would invoke discriminatory practices proscribed by Commission regulations.

Another concern which gave rise to the rate restrictions imposed on affiliated marketers by the Commission was that prior to Order No. 636's directive to issue complying pipelines blanket certificates for firm and interruptible sales service, the principle vehicle through which pipelines could market gas was the so-called ISS certificates [24]—which are to be supplanted by the aforementioned blanket certificates.[25] ISS certificates authorized a pipeline to make interruptible sales for resale of surplus system supply subject to Commission imposed rate restrictions. In the various marketing certificates, the Commission authorized affiliated marketers to sell ISS gas purchased from nonaffiliated pipelines without rate restrictions but required that sales of gas purchased from their affiliated pipelines be made at the price the marketer paid for the gas.[26] Thus, the pipeline would be prevented from circumventing the rate restrictions placed on its ISS certificate by merely creating a marketing "alter ego" which could tack on an additional cost for the gas without any corresponding benefit to the customers. Limiting the term of the affiliated marketer certificates enabled the Commission to periodically review the practices of the marketer to ensure that anticompetitive activities described above did not occur. However, the implementation by a pipeline of Order No. 636 will eviscerate these concerns regarding the potential for anti-competitive practices on the part of pipelines and their affiliated marketers because complying pipelines will be issued blanket sales certificates to effectuate firm and interruptible sales at market based rates. By removing the Commission's sales restrictions and authorizing open access interstate pipelines to make sales for resale in the same competitive manner as its affiliated marketer, the potential for anticompetitive practices with respect to the sale of gas is removed.

On June 16, 1992, the Commission issued two orders concerning marketing authorizations: *O&R Energy, Inc. et al.*, 59 FERC ¶ 61,318 (1992), and *New England Power Company and The Narragansett Electric Company et al.*, 59 FERC ¶ 61,317 (1992). These orders—which either issued, extended, or amended marketing authorizations—pertained to marketers (both affiliated and nonaffiliated), end-users, LDCs, intrastate pipelines, and affiliates thereof. In contemplation of full implementation of Order No. 636 by the fall of 1993, the aforementioned certificate authorizations for marketers who are LDCs, intrastate pipelines, or end-users and who are not affiliated with open access interstate pipelines were limited to a term ending September 30, 1993, at which time the certificates will automatically convert to unlimited term certificates, unless the Commission establishes a new term limitation on or before September 30, 1993. With regard to marketers affiliated with open access interstate pipelines, the certificate authorizations were limited to a term the earlier of September 30, 1993 or the effective date of the affiliated interstate pipeline's compliance filing pursuant to Order No. 636. This term limitation does not conflict with the proposed regulations set forth herein because upon effectiveness of this rule, all prior marketing authorizations will be supplanted. This proposed rule will be effective as to affiliated marketers when their affiliated pipelines come into full compliance with Order No. 636.

IV. Environmental Analysis

Commission regulations require that an Environmental Assessment or an Environmental Impact Statement be prepared for any Commission action that any have a significant adverse effect on the human environment.[27] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[28] The subject action here will not have a significant adverse impact on the human environment and falls within the categorical exemption provided in the Commission's regulations for sales of natural gas that require no construction of facilities.[29] Therefore, an

[21] We note that on July 16, 1992, the Commission issued Order No. 543, Regulations Government Vehicular Natural Gas, 60 FERC ¶ 61,032 (1992). Order No. 543 issued generic blanket certificates authorizing the sale of Vehicular Natural Gas (VNG) for resale in interstate commerce. A final rule in the instant proceeding, together with the sales certificates issued pursuant to Order No. 636, would, in large measure, subsume the authorization issued in Order No. 543. However, codifications relevant specifically to VNG are only addressed in Order No. 543.

[22] Western Gas, 58 FERC ¶ 61,365, at p. 62,251.

[23] Enron Gas Marketing, Inc., 57 FERC ¶ 61,257, at p. 61,804 (1991).

[24] See, *e.g.*, Northern Natural Gas Company, 42 FERC ¶ 61,303 (1988); Transwestern Pipeline Company, 43 FERC ¶ 61,240 (1988); CNG Transmission Corporation, 45 FERC ¶ 61,466 (1988).

[25] See Arkla Energy Resources, Inc. *et al.*, 59 FERC ¶ 61,173 (1992).

[26] See ANR Supply Company, *et al.*, 50 FERC ¶ 61,422 (1990).

[27] Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783, *codified* at CFR Part 380.

[28] 18 CFR 380.4.

[29] 18 CFR 380.4(a)(27).

environmental assessment is unnecessary and will not be prepared in this rulemaking.

V. Regulatory Flexibility Act Certification

When the Commission is required by section 553 of the Administrative Procedures Act [30] to publish a notice of proposed rulemaking, it is also required by section 603 of the Regulatory Flexibility Act (RFA) [31] to prepare and make available for public comment an initial regulatory flexibility analysis, unless the Commission certifies, pursuant to the RFA, that the proposed rule would not have a "significant economic impact on a substantial number of small entities." [32] The RFA is intended to ensure careful and informed agency consideration of rules that may significantly affect small entities and to encourage consideration of alternative approaches to minimize harm or burdens on small entities.

The Commission does not believe that this rule would have a significant economic impact, within the meaning of the RFA, on a substantial number of small entities. This rule would (1) issue blanket certificates to market gas to all persons who are not interstate pipeline, thereby eliminating the necessity of such persons having to apply for case-specific marketing authority, and (2) would limit the Commission's jurisdiction over the holders of the certificates to the extent of their actions performed pursuant to these certificates.

In view of the nature of the proposals, the Commission concludes that there will not be a significant impact on a significant number of small entities.

VI. Information Collection Requirement

The Office of Management and Budget's (OMB) regulations require that OMB approve certain information collection requirements imposed by agency rules.[33] However, this proposed rule contains no information collection requirements and therefore is not subject to OMB approval.

VII. Comment Procedures

The Commission invites all interested persons to submit written comments on the matters proposed in this notice, including any related matters or alternative proposals that commentors may wish to discuss. An original and 14 copies of the written comments must be filed with the Commission on or before September 24, 1992. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, and should refer to Docket No. RM92–9–000.

All written comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Room, room 3104, 941 North Capitol Street NE., Washington, DC 20426, during regular business hours.

List of Subjects in 18 CFR Part 284

Continental Shelf, Natural Gas, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission proposes to amend part 284, chapter I, title 18, Code of Federal Regulations, as set forth below.

By direction of the Commission.

Lois D. Cashell,

Secretary.

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

1. The authority citation for part 284 is revised to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352; 43 U.S.C. 1131–1356.

2. In part 284, subpart L is added to read as follows:

Subpart L—Certain Sales for Resale by Non-Interstate Pipelines

Sec.
284.401 Definitions.
284.402 Blanket marketing certificates.

Subpart L—Certain Sales for Resale by Non-Interstate Pipelines

§ 284.401 Definitions.

(a) *Affiliated marketer.* For purposes of this subpart, an "affiliated marketer" is a person engaged in the "marketing" of natural gas that is an "affiliate" of an interstate pipeline as those terms are defined in § 161.2 of this chapter.

§ 284.402 Blanket marketing certificates.

(a) *Authorization.* Any person who is not an interstate pipeline is granted a blanket certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act authorizing the certificate holder to make sales for resale at market negotiated rates in interstate commerce of any gas that is subject to the Commission's Natural Gas Act jurisdiction. A blanket certificate issued under subpart L is a certificate of limited jurisdiction which will not subject the certificate holder to any other regulation under the Natural Gas Act jurisdiction of the Commission by virtue of transactions under the certificate.

(b) The authorization granted in paragraph (a) of this section will become effective on [insert date that is 30 days after publication in the **Federal Register**] except as otherwise provided in paragraph (c) of this section.

(c) The authorization granted in paragraph (a) of this section will become effective for an affiliated marketer when its affiliated pipeline's compliance filing under § 284.14(b) is approved by the Commission. Should a marketer be affiliated with more than one pipeline, the authorization granted in paragraph (a) of this section will not be effective for transactions involving other affiliated interstate pipelines until such other pipelines' compliance filings under § 284.14(b) are approved by the Commission. The authorization granted in paragraph (a) of this section is not extended to affiliates of non-open access interstate pipelines.

(d) Abandonment of the sales service authorized in paragraph (a) of this section is authorized pursuant to section 7(b) of the Natural Gas Act upon the expiration of the contractual term or upon termination of each individual sales arrangement.

[FR Doc. 92–19018 Filed 8–10–92; 8:45 am]
BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA 6–2–5565; A–1–FRL–4193–4]

Approval and Promulgation of Air Quality Implementation Plans; Revision to the Virginia Inspection and Maintenance (I/M) Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. This revision amends the motor vehicle inspection and maintenance (I/M) Program. On March 9, 1987, EPA officially notified the Governor of the Commonwealth of Virginia that the Northern Virginia I/M program was not operating at a level that provided for achievement of the minimum emission reduction requirements (MERR) for hydrocarbons and carbon monoxide as required in the Virginia SIP. EPA

[30] 5 U.S.C. 553.
[31] 5 U.S.C. 601–612.
[32] 5 U.S.C. 605(b).
[33] 5 CFR part 1320.

requested that the operating problems be corrected by developing and implementing a corrective action plan. In response, the Commonwealth significantly revised and improved the program by adopting new regulations for governing the I/M program operation and new emission analyzer specifications. These changes became effective on January 1, 1989. The intended effect of this action is to propose approval of the regulations that the Commonwealth has adopted in an effort to eliminate the I/M operating problems and to fulfill the I/M emission reduction commitments made in its currently approved Northern Virginia ozone attainment plan. This SIP revision was not submitted to satisfy the I/M requirements of the Clean Air Act Amendments of 1990. Virginia must make further amendments to its SIP to satisfy the Clean Air Act Amendments (CAAA) of 1990 requirements for I/M. This action is being taken in accordance with section 110 of the Clean Air Act.

DATES: Comments must be received on or before September 10, 1992. Public comments on this document are requested and will be considered before taking final action on this Inspection and Maintenance SIP revision.

ADDRESSES: Comments may be mailed to Thomas J. Maslany, Director, Air, Radiation and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107; Public Information Reference Unit, U.S. Environmental Protection Agency, 401 M Street, SW., Washington DC 20460; and Virginia Department of Air Pollution Control, P.O. Box 10089, Richmond Virginia 23240.

FOR FURTHER INFORMATION CONTACT: Brian K. Rehn, (215) 597–4554.

SUPPLEMENTARY INFORMATION:

Background

On September 28, 1989, the Commonwealth of Virginia submitted a formal revision to its SIP. The SIP revision consists of Regulation VR 120–99–01, Regulation for the Control of Motor Vehicle Emissions; Regulation VR 120–99–02, Regulation for Vehicle Emission Control Program Analyzer Systems; and the Motor Vehicle Emissions Control Law. Also submitted as part of the revision was information concerning the Northern Virginia 1982 SIP emission reduction shortfall. On January 18, 1990, the Commonwealth formally requested that the portion of the submittal addressing the SIP shortfall be removed from the SIP revision.

Section 172(b)(11)(B) of the Clean Air Act required a motor vehicle I/M program as an element of the 1979 SIP revisions for major urban areas which required an extension beyond 1982 for attainment of the National Ambient Air Quality Standards (NAAQS) for ozone or carbon monoxide. The Commonwealth of Virginia requested an extension of the deadline beyond 1982 and consequently included I/M as an element in its 1979 SIP revision. This I/M program was implemented on December 11, 1981.

The Virginia program was audited by EPA in June of 1984. The audit revealed serious operating problems related to improper testing and excessive issuance of cost waivers. EPA determined that, based on the law failure rate of 2% and the high waiver rate of 32%, the program failed to meet the minimum level of performance originally required in the approved SIP. On March 9, 1987, EPA sent a letter to the Governor of Virginia requesting that a corrective action plan be developed and implemented to eliminate the operating problems.

The SIP revision which is the subject of today's rulemaking was not submitted to satisfy the Clean Air Act Amendments of 1990. The Virginia Department of Air Pollution Control is fully aware that revisions to the Commonwealth's SIP for I/M are required pursuant to the amended Clean Air Act. This revision was submitted on September 28, 1989 and serves to strengthen the current SIP. This revision in no way relieves the Commonwealth of the requirements of the 1990 Clean Air Act Amendments for I/M.

Evaluation of Submitted Revision

The House of Representatives Committee report on the 1977 Clean Air Act Amendments required I/M programs to meet minimum emission reduction requirements (MERR). The report identified MERR as the level of effectiveness of the New Jersey I/M program at the time. The New Jersey I/M program design included the following: a start year of 1983, a pre-1981 model year failure rate of 20%, a 20 model year coverage, a zero percent waiver rate for both pre and post 1981 model year vehicles, a compliance rate of 100%, an annual, centralized program design, coverage of light duty vehicles up to 6,000 pounds, and an idle test.

As specified in the January 22, 1981 (46 FR 7182) notice titled, "State Implementation Plans, Approval of 1982 Ozone and Carbon Monoxide Plan Revisions for Areas Needing an Attainment Date Extension", EPA requires that the following elements be included as part of an I/M program in order to achieve the minimum emission reduction requirements:

(1) Inspection test procedures,
(2) Emissions standards,
(3) Inspection station licensing requirements,
(4) Emission analyzer specification and maintenance/calibration requirements,
(5) Recordkeeping and record submittal requirements,
(6) Quality control, audit, and surveillance procedures,
(7) Procedures to assure that noncomplying vehicles are not operated on public roads,
(8) Any other official program rules, regulations, and procedures,
(9) A public awareness plan, and
(10) A mechanics training program if additional emission reduction credits are being claimed for mechanics training.

In addition, as discussed in an EPA I/M policy memorandum dated July 17, 1978, all decentralized programs, of which Virginia is one, must also comply with the following requirements:

1. All official inspection facilities must be licensed. Provisions for the licensing of inspection facilities must insure that the facility has obtained, prior to licensing, analytical instrumentation which has been approved for use by the appropriate state, local, or regional government agency. A representative of the facility must have received instructions in the proper use of the instruments and in vehicle testing methods, and must have demonstrated proficiency in these methods. The facility must agree to maintain records and to submit to inspection of the facility. The appropriate government agency must have provisions for penalties for facilities which fail to follow prescribed procedures and for misconduct.

2. Records required to be maintained should include the description (make, year, license number, etc.) of each vehicle inspected, and its emissions test results. Records must also be maintained on the calibration of testing equipment.

3. Summaries of these inspection records should be submitted on a periodic basis to the governing agency for auditing.

4. The governing agency should inspect each facility periodically to check the facilities' records, check the

calibration of the testing equipment and observe that proper test procedures are followed.

5. The governing agency should have an effective program of unannounced/unscheduled inspections both as a routine measure and as a complaint investigation measure. It is also recommended that such inspections be used to check the correlation of instrument readings among inspection facilities.

6. The governing agency should operate a "referee" station where vehicle owners may obtain a valid test to compare to a test from a licensed station. At least one "referee" station must be present in each I/M metropolitan area.

A summary of the major changes made to the Virginia I/M program to fulfill the above listed requirements can be found in the technical support document (TSD) related to this action. A copy of that TSD may be obtained, upon request, from the EPA Regional Office listed in the **ADDRESSEES** section of this notice. In addition, the TSD contains the results of EPA's MOBILE4 analyses which demonstrate that the program meets MERR. As for making up the shortfall from the program that began in 1983, the carbon monoxide (CO) credits obtained from the 1989 program from 1989 to 1992 must be applied to make up the CO shortfall and the hydrocarbon (HC) credits obtained from 1989 to 1991 must be applied to make up the HC shortfall. Conseqently, these credits cannot be applied toward any future attainment demonstrations or toward meeting future I/M emission reduction requirements.

This revision to the Virginia SIP was adopted by the State Air Pollution Control Board on October 28, 1988 and April 28, 1989. As required by 40 CFR 51.102, the Commonwealth of Virginia has certified that, after adequate public Notice, on October 18, 1988, a public hearing was held in respect to this SIP revision.

EPA originally approved this SIP revision as a direct final rulemaking without prior proposal because the Agency viewed this as a noncontroversial amendment and anticipated no adverse comments. The final rule was published in the May 6, 1992 **Federal Register**. Notice of intent to submit adverse comment was submitted to EPA within the 30 day comment period provided in the direct final rule. A **Federal Register** notice is being issued elsewhere today withdrawing the final rule as published in the May 6, 1992 **Federal Register** and announcing the publication of this proposed action.

EPA is proposing to approve the Commonwealth of Virginia SIP revision amending the motor vehicle inspection and maintenance program, which was submitted on September 28, 1989. EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this notice.

Proposed Action

EPA proposes to approve this revision to the Virginia SIP, which amends the Northern Virginia Motor Vehicle I/M program by adopting new regulations for governing the I/M program operation (Regulation VR 120–99–01) and new emission analyzer specifications (Regulation VR 120–99–02). This SIP submittal was not submitted to satisfy the Clean Air Act Amendments of 1990. The Virginia Department of Air Pollution Control is aware that further revisions to Virginia's SIP are necessary to meet the I/M requirements of the amended Clean Air Act. This revision was submitted on September 28, 1989 and serves to strengthen the current SIP, but in no way does it relieve the Commonwealth of the requirements set forth in the Clean Air Act Amendments of 1990.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under 5 U.S.C. 605(b), I certify that this SIP revision approving revisions to the Virginia I/M program will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

The Administrator's decision to approve or disapprove the SIP revision will be based on whether it meets the requirements of section 110(a)(2)(A)–(K), 110(a)(3), and part D of the Clean Air Act, as amended, and EPA regulations in 40 CFR part 51.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: July 23, 1992.

Edwin B. Erickson,

Regional Administrator, Region III.

[FR Doc. 92–19059 Filed 8–10–92; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[PA 2–5361; A–1–FRL–4192108]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania Correction of Reasonably Available Control Technology Regulations for Certain Sources of Volatile Organic Compounds

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve State Implementation Plan (SIP) revisions submitted by the Commonwealth of Pennsylvania. These revisions make the changes required by section 182(a)(2)(A) of the Clean Air Act, as amended in 1990, pertaining to the correction of State volatile organic compound (VOC) regulations consistent with the EPA guidance provided in the Control Technique Guidelines (CTGs). The intended effect of this action is to propose approval of the revisions to the Pennsylvania SIP pertaining to gasoline marketing, recordkeeping, surface coating, graphic arts, deletion of the generic bubble regulation, seasonal operation of auxiliary incineration equipment, compliance schedules and synthesized pharmaceutical products. This action is being taken in accordance with the section 110 of the 1990 Clean Air Act Amendments (1990 CAAA).

DATES: Comments must be received on or before September 10, 1992. Public comments on this document are requested and will be considered before taking final action on this SIP revision.

ADDRESSES: Comments may be mailed to Thomas J. Maslany, Director, Air, Toxics, and Radiation Management Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air,

Toxics, and Radiation Management Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107; Public Information Reference Unit, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; Commonwealth of Pennsylvania Department of Environmental Resources Bureau of Air Quality Control, P.O. Box 2357, Executive House—2d & Chestnut Streets, Harrisburg, PA 17105.

FOR FURTHER INFORMATION CONTACT: Cynthia H. Stahl, Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, (215) 597–9337.

SUPPLEMENTARY INFORMATION: On August 15, 1991, the Commonwealth of Pennsylvania submitted a formal revision to its State Implementation Plan (SIP). On May 26, 1988, EPA issued a SIP call to Pennsylvania notifying the State that its SIP was inadequate to assure attainment and maintenance of the primary National Ambient Air Quality Standard (NAAQS) for ozone. See 53 FR 34500 (September 7, 1988). In a June 14, 1988 follow-up letter, EPA notified Pennsylvania of deficiencies in its VOC regulations which needed to be corrected in order to make the regulations consistent with EPA policy and guidance. EPA issued an additional SIP call to Pennsylvania on November 8, 1989 which advised the State that additional counties failed to attain the NAAQS for ozone. See 55 FR 30973 (July 30, 1990). A SIP call is a finding made by EPA pursuant to section 110(a)(2)(H) of the Clean Air Act, 42 U.S.C. 7410(a)(2)(H) in which EPA identifies a SIP to be inadequate to attain and maintain the NAAQS. The changes to the regulations submitted on August 15, 1991 represent Pennsylvania's partial response to EPA's 1988 and 1989 SIP calls. Although the 1988 and 1989 SIP calls were made prior to the 1990 CAAA, section 182(a)(2)(A) of the Clean Air Act as amended, 42 U.S.C. 7511(a)(2)(A), requires States to respond to pre-Amendment SIP calls which require the addition or correction of SIP provisions concerning reasonably available control technology (RACT).

The SIP revision under review consists of changes to 25 Pennsylvania Code chapters 121 and 129, pertaining to the regulation of VOC sources. Specifically, these changes are:

(1) The geographic expansion of the Stage I vapor recovery regulations and the removal of certain exemptions in the Stage I regulations (Section 129.61);

(2) Improved recordkeeping and a requirement that any alternative compliance methods not specified by the regulations must be approved by EPA as SIP revisions (Section 129.51);

(3) The removal of certain exemptions for bulk terminals and bulk plants (Sections 129.59 and 129.60, including the corresponding definitional changes in Section 121.1);

(4) The lowering of certain applicability levels for certain surface coating processes and expanded geographic applicability of the surface coating regulations (Section 129.52);

(5) Removal of the generic bubble provision (Section 129.53);

(6) The change in the regulation pertaining to the seasonal operation of incineration equipment (Section 129.54);

(7) Compliance schedules (Section 129.66);

(8) Graphic arts applicability levels (Section 129.67); and,

(9) The corrections to the regulation for the manufacture of synthesized pharmaceutical products (Section 129.68).

This submittal was part of a larger package which also included the definitions and emission standards for wood furniture coating. On October 11, 1991, EPA returned the wood furniture regulation portion of the package to Pennsylvania because adequate technical support had not been provided with the submittal and was, consequently, determined to be incomplete. Therefore, this notice addresses the August 15, 1991 submittal with the exception of the wood furniture regulations and applicable definitions.

Summary of the SIP Revisions

Section 129.61—Stage I Control

The regulations applicable to Stage I vapor recovery are changed to apply statewide. As part of the Ozone Transport Region established by Congress in the 1990 CAAA, Pennsylvania is required to adopt and implement RACT regulations, of which Stage I vapor recovery is a part, by November 15, 1992. In making the Stage I regulation effective statewide now, Pennsylvania is meeting its obligation earlier than mandated by the Act. In addition, the exemptions in this regulation are modified to be consistent with EPA Control Technique Guidelines (CTG) pertaining to Stage I vapor recovery. The old Pennsylvania exemption for facilities with annual throughput of less than 60,000 gallons is deleted and the exemption for stationary storage tanks with a capacity less than 2,000 gallons is limited to tanks installed before January 1, 1979. An exemption for stationary storage tanks with capacities less than 250 gallons installed after January 1, 1979 is added. A specific provision requiring that the dispensing delivery tank must remain vapor tight at all times is also added to this regulation. The accompanying technical support document discusses the EPA Stage I applicability requirements in more detail.

EPA has received some information from Pennsylvania Department of Environmental Resources (DER) regarding the feasibility of controlling vapors from gasoline tanks which are less than or equal to 2000 gallons in capacity. This information was generated by the Pennsylvania Petroleum Association (PPA) in a survey it conducted among its members. EPA has advised DER that additional information is needed in order for EPA to determine whether a higher tank size capacity applicability level for Stage I vapor recovery in Pennsylvania would be appropriate. Pennsylvania would be making such a demonstration under the "Five Percent Equivalency Rule". The 5% rule permits States to allow higher applicability levels for source regulations if it can be demonstrated that the sources being controlled between the proposed applicability level and CTG applicability level for that source category represents less than 5% of the total emissions of the sources in that source category.

If Pennsylvania desires to revise this regulation after reviewing the additional information requested by EPA, it may submit a further revision to 25 Pa. Code § 129.61 for SIP approval (after meeting the SIP submittal requirements). EPA will, however, continue the rulemaking process for the present regulation as it appears to comport with EPA guidance and has been submitted in response to a SIP call.

Section 129.51—General

The equivalency provision in this regulation now requires that compliance with the regulations may be achieved through alternative methods provided that the method is approved by Pennsylvania, the emissions are equal to or less than those which would have been allowed using the specified methods, all calculations are performed on a solids basis, capture efficiency and emissions testing are conducted in accordance with methods approved by EPA, adequate records are kept to determine compliance and all alternative compliance methods are approved by EPA through a SIP revision. Pennsylvania did not adopt the test methods for capture efficiency because they consider such compliance methodology to be an alternative to the emission standards in the SIP, which

would require EPA approval. The changes to the regulations are consistent with EPA guidance and address the concerns with recordkeeping and test methods raised in the 1988 SIP call.

Section 121.1—Definitions

The definitions of bulk terminal and bulk plant are modified to eliminate averaging to determine daily throughput. The regulation now requires that a facility with a daily throughput of 20,000 gallons or more of gasoline in any single day will be defined as a bulk gasoline terminal. Facilities which never exceed a daily throughout of less than 20,000 gallons of gasoline in any single day are defined as a bulk gasoline plant. Elimination of the averaging makes this regulation more enforceable since source and regulatory personnel can determine on the basis of any single day's throughout whether this regulation is applicable.

The definition of clear coat, applicable primarily to the miscellaneous metal parts and products regulations, is added to this section. The definition is consistent with that found in EPA's guidance documents and excludes those coatings which would be defined as extreme performance coatings.

Sections 129.59 and 129.60—Bulk Gasoline Terminals and Plants

A daily throughput recordkeeping requirement is added to each of these regulations, as required by EPA. The exemption for bulk gasoline plants with average daily throughputs of less than 12,000 gallons is reduced to 4,000 gallons, making it consistent with EPA's CTG for bulk gasoline plants. The only minor deviation from EPA's guidance is that regulation requires that the average throughput of 4000 gallons be determined as of January 1, 1987. Although EPA did not recommend that Pennsylvania establish a baseline date from which sources are to evaluate their emissions, this is acceptable. EPA agreed to allow Pennsylvania to use a baseline date because it was sufficiently historical so as to capture the majority of the target source population and because Pennsylvania had a detailed emissions inventory for the chosen year. The accompanying technical support document discusses this subject in more detail.

Section 129.52—Surface Coating Processes

Section 129.52(a) clearly establishes the applicability level for all surface coating processes (graphic arts processes are not included in this group) at 3 pounds (lbs) per hour, 15 lbs per day or 2.7 tons per year of VOC. Facilities which emit or have emitted this level of VOC emissions since January 1, 1987 and are located in Allegheny, Armstrong, Beaver, Bucks, Butler, Carbon, Chester, Delaware, Fayette, Lehigh, Montgomery, Northampton, Philadelphia, Washington or Westmoreland Counties must meet the emission standards in this regulation.

Section 129.52(b) is modified to require that the RACT emission standards be met either on a coating by coating basis or through add-on control equipment such that calculation of the required emission reduction is performed on a solids basis. VOC calculations which are not performed on a solids basis could give credit for VOC emission reductions which are not actually obtained. Solids-based calculations are those where the emission standard is converted to its equivalent solids based standard using the standard solvent density of 7.36 lbs/gallon and actual solvent densities of the coatings is used to determine the VOC content of the sources' coatings. The standard solvent density of 7.36 lbs/gallon was used by EPA when the surface coating and graphic arts CTGs were developed. Any compliance calculations, however, must use the sources' coatings' actual solvent densities. The equation in the Pennsylvania regulation which is to be used for sources which expect to comply with the applicable emission standard using an add-on control device is now a solids based equation and is acceptable to EPA. An additional recordkeeping requirement in this section requires all facilities, regardless of each facility's annual emissions, to keep records sufficient to determine applicability and compliance.

The emission standard under miscellaneous metal parts pertaining to topcoats for locomotives and heavy-duty trucks and the standard for hopper cars and tank car interiors is each reduced to the miscellaneous metal parts—extreme performance coating standard of 3.5 lbs. VOC/gallon coating less water. The coating properties required for coatings used to paint locomotives, heavy-duty trucks, hopper cars and tank car interiors are such that these coatings meet the definition of an extreme performance coating. The changes made to the emission standards for these sources are consistent with EPA's guidance documents on the appropriate coating limits for these kinds of sources.

Section 129.53—Generic Bubble Regulation

This regulation is deleted. Any alternative standards or methods of compliance must meet the requirements in § 129.51. See the discussion above regarding § 129.51.

Section 129.54—Seasonal Operation of Auxiliary Incineration Equipment

This regulation has been changed to limit the seasonal operation of auxiliary incineration equipment to those facilities using natural gas as the auxiliary fuel. The previous regulation had allowed all facilities using any kind of auxiliary fuel to obtain an exemption under this regulation. The modified regulation is now consistent with the EPA requirements.

Section 129.66—Compliance Schedules and Final Compliance Dates

This regulation generally requires that all affected sources must comply with the modified regulations immediately. Only those sources which became newly subject to the regulations because of lower applicability levels or more stringent emission standards would be allowed up to one year from the effective date of the Pennsylvania regulation (until August 3, 1992) to comply with the modified regulations. This regulation is consistent with EPA's policies interpreting the requirements of the Clean Air Act.

Section 129.67—Graphic Arts Systems

This regulation now clearly subjects all graphic arts sources which have the potential to emit or which had emitted 100 tons per year or more of VOC since January 1, 1987 to the requirements of Section 129.67. The definition of potential emissions was already in the Pennsylvania regulations and means the maximum emissions of the source in the absence of pollution control equipment. Graphic arts sources are defined as those which do rotogravure and/or flexographic printing. In addition, the requirements of the graphic arts regulation now prohibit a source from operating unless it meets one of several emission standards. In order to comply with the regulation, the source's applicable press inks may be waterborne inks which are defined as 25% or less VOC and 75% or more water by volume of the volatile fraction of the ink. Alternatively, the inks may be high-solids which is defined as 60% or more by volume of solid material. For sources which use add-on control equipment, the applicable emission standard is a 75% overall emission reduction for publication rotogravure presses, 65%

overall emission reduction for other rotogravure presses, and 60% overall emission reduction for flexographic presses. Each of these overall emission reduction requirements are reductions from the VOC input to the press, rather than an emission reduction from a historical baseline. Presses used to check product quality and which do not emit more than 400 pounds of VOC in a 30 day running period are exempt from this regulation. This regulation is consistent with EPA's CTG document for the graphic arts industry.

Section 129.68—Manufacture of Synthesized Pharmaceutical Products

This regulation is changed to require that the overall emission reduction from air dryers and production equipment exhaust be 90% rather than 85%. In addition, the 50 ton per year exemption is deleted. These changes are consistent with EPA's CTG document for the manufacture of synthesized pharmaceutical products.

EPA's Evaluation of the SIP Revision

The changes being made with this revision to the Pennsylvania SIP make significant improvements in the applicability and enforceability of the regulations. These changes, pertaining to Stage I vapor recovery, surface coating, graphic arts, recordkeeping, gasoline marketing, pharmaceutical products, and compliance schedules, are submitted by Pennsylvania in response to EPA's SIP calls. A detailed evaluation of these SIP revisions has been performed by EPA in a Technical Support Document (TSD) for this action. A copy of this TSD is available, upon request, from the EPA Regional Office listed in the ADDRESSES section of this notice.

Proposed Action

EPA is proposing to approve the changes in the Pennsylvania VOC regulations, Chapters 121 and 129, pertaining to Stage I vapor recovery, surface coating, graphic arts, recordkeeping, gasoline marketing, pharmaceutical products, and compliance schedules because they are consistent with the 1990 Clean Air Act Amendments. These changes represent Pennsylvania's partial response to the May 26, 1988 and the November 8, 1989 SIP calls.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under 5 U.S.C. 605(b), the Administrator certifies that SIP approvals under sections 107, 110, and 172 of the Clean Air Act will not have a significant economic impact on a substantial number of small entities. SIP approvals (or redesignations) do not create any new requirements but simply approve requirements that are already State law. SIP approvals (or redesignations), therefore, do not add any additional requirements for small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis for a SIP approval would constitute Federal inquiry into the economic reasonableness of the State actions. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds.

This rulemaking action, proposing to approve changes to Chapters 121 and 129 of the Pennsylvania regulations pertaining to Stage I vapor recovery, surface coating, graphic arts, deletion of the generic hubble regulation, recordkeeping, gasoline marketing, pharmaceutical products, and compliance schedules, has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). EPA has submitted a request for a permanent waiver for table 2 and 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

The Regional Administrator's decision to approve or disapprove the SIP revision will be based on whether it meets the requirements of sections 100(a)(2)(A)–(K), 110(a)(3) and Part D of the Clean Air Act, as amended, and EPA regulations in 40 CFR part 51.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Authority: U.S.C. 7401–7671q.

Dated: June 26, 1992.

Edwin B. Erickson,

Regional Administrator, Region III.

[FR Doc. 92–19061 Filed 8–10–92; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 122

[FRL 4190–1]

RIN 2040–AA79

National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated With Industrial Activity on Indian Lands in Oregon and Water Quality Certification

AGENCY: Enironmental Protection Agency [EPA].

ACTION: Proposed rule and draft general NPDES permit.

SUMMARY: This document announces EPA-Region 10's proposal to issue a general National Pollutant Discharge Elimination System (NPDES) permit for facilities on Indian Lands in Oregon that discharge storm water associated with industrial activities, and a certification that the discharges will comply with section 401 of the Clean Water Act (CWA). This general permit, when issued, will authorize storm water discharges in accordance with the CWA section 402(p).

DATES: Written comments must be received by September 10, 1992. Persons wishing to request that a public hearing be held, may do so in writing, by September 10, 1992. A request for a public hearing shall state the nature of the issues to be raised as well as the requester's name, address, and telephone number.

ADDRESSES: The public should send an original and two copies of their comments on the general permit to Kevin Weiss, Permits Division [EN–336], Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. This public record is located at EPA Headquarters, EPA Public Information Reference Unit, Rm. 2402, 401 M Street SW., Washington, DC 20460. A reasonable free may be charged for copying. Comments on EPA-Region 10's water quality 401 certification must be sent to Steve Bubnick, EPA-Region 10, Water Permits Section (WD-134), 1200 Sixth Avenue, Seattle, WA 98101.

FOR FURTHER INFORMATION CONTACT: Jeanette Carriveau, EPA-Region 10, (206) 553–1214.

SUPPLEMENTARY INFORMATION: Section 405 of the Water Quality Act of 1987 (WQA) added section 402(p) of the CWA which requires EPA to develop a phased approach to regulating storm water discharges under the NPDES program. EPA published a final regulation on November 16, 1990 (55 FR 47990), establishing permit application

requirements for storm water discharges associated with industrial activity and for discharges from municipal separate storm sewer systems serving a population of 100,000 or more. In the permit application regulations, EPA defined the term "storm water discharge associated with industrial activity" in a comprehensive manner to cover a wide variety of facilities. This definition greatly expanded the number of industrial facilities subject to the NPDES program.

On August 16, 1991 (59 FR 40948), EPA proposed a general permit to authorize the discharge of storm water associated with industrial activities in several states where EPA has permitting jurisdiction. EPA inadvertently omitted to include permit coverage for facilities on Indian lands in the state of Oregon. The purpose of this notice is to clarify EPA's intent to extend this permit to Indian lands in Oregon. Therefore, EPA incorporates all provisions of the draft general permit and accompanying fact sheet as published on August 16, 1991 (56 FR 40948). This notice is not soliciting additional comments on the general permit conditions, but rather on its application to Indian lands in Oregon.

EPA-Region 10 has certified pursuant to Section 401 of the CWA that the subject discharges will comply with the applicable provisions of CWA sections 208(e), 301, 302, 303, 306, and 307.

Copies of the draft general permit are also available from EPA-Region 10.

Dated: July 22, 1992.

Dana A. Rasmussen,

Regional Administrator.

[FR Doc. 92-18948 Filed 8-10-92; 8:45 am]

BILLING CODE 6560-50-M

ACTION

45 CFR Part 1224

Implementation of the Privacy Act of 1974

AGENCY: ACTION.

ACTION: Notice of proposed rulemaking.

SUMMARY: ACTION proposes to exempt a system of records from certain provisions of the Privacy Act of 1974, 5 U.S.C. 552a ("Privacy Act"), to the extent that the system contains investigatory material pertaining to the enforcement of criminal laws or compiled for law enforcement purposes. The system of records to be exempted contains the investigative files of the Office of the Inspector General of ACTION.

DATE: Written comments must be received on or before September 10, 1992.

ADDRESS: Written comments should be sent to Thomas C. Buchanan, Counsel to the Inspector General, ACTION, 1100 Vermont Avenue, NW, Suite 12100, Washington, DC 20525. To ensure prompt attention, please indicate "Comments to Proposed Privacy Act Exemption" on the outside envelope.

FOR FURTHER INFORMATION CONTACT: Thomas C. Buchanan, Counsel to the Inspector General, at the above address, or by telephone at (202) 606-4804; or Edward F. Carey, Privacy Act Officer, ACTION, 1100 Vermont Avenue, NW, Suite 3200, Washington, DC 20525, (202) 606-5242.

SUPPLEMENTARY INFORMATION:

I. Background

On December 31, 1991, ACTION, published a "Notice of Systems of Records" in the **Federal Register** (56 FR 67576). Included in this notice is system number "ACTION-15," the Office of the Inspector General Investigative Files. This system contains investigatory material pertaining to the enforcement of criminal laws and compiled for law enforcement purposes. ACTION proposes to exempt this system of records from specified provisions of the Privacy Act. (A clarification of one of the system's routine uses is provided in section III, below.)

II. Discussion of Proposed Exemption

Section (j)(2) of the Privacy Act provides that the head of an agency may promulgate rules to exempt any system of records within the agency from any part of section 552a except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i), if the system of records is—

maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws * * * and which consists of (A) information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status; (B) information compiles for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (C) reports identifiable to an individual compiles at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.

Section (k)(2) of the Privacy Act provides that the head of an agency may promulgate rules to exempt any system of records within the agency from sections 552a(c)(3), (d), (e)(1), (e)(4)(G) through (I), and (f), if the system of records is "investigatory material compiled for law enforcement purposes."

If a system of records is not exempted from these sections, the Privacy Act generally requires the agency to: Account for disclosures; permit individuals access to their records; permit individuals to request amendment to their records; collect information directly from the subject individual; publish information in the **Federal Register** about access to records; and promulgate rules that establish procedures for notice and disclosure of records. The exemptions that may be asserted with respect to investigatory systems of records permit an agency to protect information when disclosure would interfere with the conduct of the agency's investigation.

The Office of the Inspector General Investigative Files contain information of the type described in the above mentioned exemptions to the Privacy Act. The Inspector General Act of 1978, as amended, 5 U.S.C. app. 3, authorizes the Inspector General of ACTION to conduct investigations to detect fraud and abuse in the programs and operations of ACTION and to assist in the prosecution of participants in such fraud or abuse. The Office of the Inspector General of ACTION maintains information in this system of records pursuant to its law enforcement and criminal investigation functions. Exemptions under section 552a(j)(2) and (k)(2) are necessary to maintain the integrity and confidentiality of the investigative files and to protect individuals from harm. Disclosure of information in these investigatory files or disclosure of the identity of confidential sources would seriously undermine the effectiveness of the Inspector General's investigations. Knowledge of such investigations also could enable subjects of the investigation to take action to prevent detection of criminal activities, conceal or destroy evidence, or escape prosecution. Disclosure of this information could lead to intimidation of, or harm to, informants, witnesses, investigative personnel, or their families The imposition of certain restrictions on the manner in which information is collected, verified, or retained could significantly impede the effectiveness of

the investigations of the Office of the Inspector General and could preclude the apprehension and successful prosecution of persons engaged in fraud or criminal activity.

Section 1224.1–14 of the ACTION regulations (45 CFR part 1224) previously was promulgated to exempt various investigatory records from certain requirements of the Privacy Act. In connection with the establishment of the system of records containing the Office of the Inspector General Investigative Files, ACTION proposes to amend Part 1224 by adding a new section, 45 CFR 1224.1–19, Inspector General Exemptions, pursuant to section 552a(j)(2) and (k)(2) of the Privacy Act.

III. Clarification of Routine Use

In the December 31, 1991, **Federal Register** notice, the Systems of Records for the Office of the Inspector General Investigative Files listed as one of its routine uses "Referral to Federal, state, local and professional licensing authorities * * *." This is not intended to permit, in every instance, disclosure of investigative files to Governmental and professional licensing authorities conducting background investigations of employees who may have been the subject of an Inspector General investigation. In instances where the Inspector General investigation has not substantiated the allegations against the individual, or where no criminal prosecution or administrative action was taken against the individual, fundamental fairness would dictate that the record not be identified or released to the licensing authority without the subject's knowledge and prior written permission. (In such situations, the individual may not even be aware that an Inspector General investigation was conducted.)

The Inspector General must be free, of course, to advise cognizant licensing authorities when an investigation reveals conduct that impugns the honesty; integrity, or professional competence of a licensed individual. (*See*, e.g., Rule 8.3 of the American Bar Association Model Rules of Professional Conduct.) In such instances, however, the Inspector General will advise the individual of disclosure concurrent with such information release.

IV. Regulatory Flexibility Act; Executive Order 12291

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Director of ACTION certifies that the amendments to part 1224 will not, if adopted, have a significant impact on a substantial number of small entities. The Director further finds that the proposed rules is not a "major rule" under Executive Order No. 12291 since it will not have an annual effect on the economy of $100 million or more.

List of Subjects in 45 CFR Part 1224

Privacy, reporting and recordkeeping requirements.

For the reasons stated in the preamble, chapter XII, subtitle B, title 45, Code of Federal Regulations, is proposed to be amended as follows:

PART 1224—IMPLEMENTATION OF THE PRIVACY ACT OF 1974

1. The authority citation for part 1224 continues to read as follows:

Authority: Pub. L. 93–579, 5 U.S.C. 552a

2. Section 1224.1–19 is added to read as follows:

§ 1224.1–19 Inspector General exemptions.

Pursuant to sections (j) and (k) of the Privacy Act of 1974, ACTION has promulgated the following exemptions to specified provisions of the Privacy Act:

(a) Pursuant to, and limited by, 5 U.S.C. 552a(j)(2), the system of records maintained by the Office of the Inspector General of ACTION that contains the Investigative Files shall be exempted from the provisions of 5 U.S.C. 552a, except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i), and 45 CFR 1224.1–12, 1224.1–13, 1224.1–15, 1224.1–16, 1224.1–17, and 1224.1–18, insofar as the system contains information pertaining to criminal law enforcement investigations.

(b) Pursuant to, and limited by, 5 U.S.C. 552a(k)(2), the system of records maintained by the Office of the Inspector General of ACTION that contains the Investigative Files shall be exempted from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f), and 45 CFR 1224.1–12, 1224.1–13, 1224.1–15, 1224.1–16, 1224.1–17, and 1224.1–18, insofar as it contains investigatory materials compiled for law enforcement purposes.

Dated: July 24, 1992.

Mary Jane Maddox,

Acting Director, ACTION.

[FR Doc. 92–19029 Filed 8–10–92; 8:45 am]

BILLING CODE 6050–28–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

Below 1 GHz LEO Negotiated Rulemaking Committee

August 4, 1992.

AGENCY: Federal Communications Commission.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public law 92–463, as amended, this notice advises interested persons of the second and third meetings of the Below 1 GHz LEO Negotiated Rulemaking Committee (11Committee"), which will be held at the Federal Communications Commission in Washington, DC.

DATES: August 18, 1992 at 9:30 a.m.—August 24, 1992 at 9:30 a.m.

ADDRESSES: Federal Communications Commission, rm. 856, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Thomas S. Tycz, Deputy Chief, Domestic Facilities Division, Federal Communications Commission, at (202) 634–1817.

SUPPLEMENTARY INFORMATION: The agenda for the second meeting of the Committee is as follows:

1. Approval of agenda.
2. Opening remarks.
3. Report on progress of informal working groups.
4. Discussion of informal working group reports.
5. Discussion of additional/revised tasks, if any, for informal working groups.
6. Update agenda for next meeting.
7. Other business.

A more detailed agenda for this meeting will be available at the Federal Communications Commission in CC Docket 92–76 following the Committee's first meeting on August 10, 1992.

The agenda for the third meeting of the Committee is as follows:

1. Approval of agenda.
2. Opening remarks.
3. Report on progress of informal working groups.
4. Discussion of informal working group reports.
5. Discussion of additional/revised tasks, if any, for informal working groups.
6. Formation of informal editorial working group to prepare the Committee's report to the Federal Communications Commission.
7. Agenda for the next meeting.

8. Other business.

A more detailed agenda for this meeting will be available at the Federal Communications Commission in CC Docket 92–76 following the Committee's second meeting on August 18, 1992.

Members of the general public may attend these meetings. The Federal Communications Commission will attempt to accommodate as many people as possible. However, admittance will be limited to the seating available. There will be no public oral participation, but the public may submit written comments to Thomas S. Tycz, the Committee's designated Federal Officer, before the meeting.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92–18952 Filed 8–10–92; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register
Vol. 57, No. 155
Tuesday, August 11, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Environmental Statements: Availability, etc.: Lassen National Forests, CA

AGENCY: Forest Service, USDA.

ACTION: Notice of availability of the proposed final environmental impact statement and land and resource management plan for the Lassen National Forest, including Butte, Lassen, Modoc, Plumas, Shasta, Siskiyou, and Tehama Counties, California.

SUMMARY: The Forest Supervisor announces the availability of the Lassen National Forest's proposed final Environmental Impact Statement and Land and Resource Management Plan for public review. A 60-day public comment period will begin August 10 and end October 9, 1992. Individuals interested in a general introduction to the proposed final Plan are invited to attend an open house in one of the following locations:

August 10—Susanville: Forest Supervisor's Office, 55 South Sacramento Street.
August 11—Chico: Pleasant Valley High School, 1475 E Avenue.
August 13—Burney: Intermountain Community Center, 37477 Main Street.
August 14—Chester: Chester Memorial Hall, corner of Stone and Gay Streets.

All open houses will be held from 4:30 p.m. to 8:30 p.m.

People who would like to receive a copy of these documents can contact the Lassen National Forest, Land Management Planning, 55 South Sacramento Street, Susanville, CA 96130. Public comments should be sent to the same address by October 9, 1992. Public comments should focus on substantive new or additional factual information not previously considered in the analysis of the Plan. All public comments will be considered before the issuance of the Record of Decision implementing the Plan.

FOR FURTHER INFORMATION CONTACT: Questions or requests for additional information about the proposed final Environmental Impact Statement and Land and Resource Management Plan should be addressed to: Leonard Atencio, Forest Supervisor, or Elizabeth Norton, Director of Public Service, Lassen National Forest, at the address above. The phone number is (916) 257–2151.

Dated: August 4, 1992.

Leonard Atencio,
Forest Supervisor.

[FR Doc. 92–19038 Filed 8–10–92; 8:45 am]
BILLING CODE 3410–11–M

AGENCY FOR INTERNATIONAL DEVELOPMENT

Housing Guaranty Program; Notice of Investment Opportunity

The Agency for International Development (A.I.D.) has authorized the guaranty of loans to the Republic of Indonesia ("Borrower") as part of A.I.D.'s development assistance program. The proceeds of these loans will be used to finance infrastructure and shelter projects for low-income families in Indonesia. At this time, the Government of Indonesia has authorized A.I.D. to request proposals from eligible lenders for a loan under this program of $25 Million Dollars ($25,000,000). The name and address of the Borrower's representatives to be contacted by interested U.S. lenders or investment bankers, the amount of the loan and project number are indicated below:

Government of Indonesia

Project: 497–HG–001—$25,000,000
Loan Guaranty Authorization No: 497–HG–004–A01

1. Attention: Mr. Benjamin Parwoto, Director General of Budget, Ministry of Finance, Jalan Lapangan Banteng Timur No. 2, Jakarta, Indonesia
Telex No.:
46415 DJMLNIA or
44319 DEPKEU
Telfax No.: 62–21–372758, 365859
Telephone No.:
62–21–358289, 372758
or 3842234 or 3848294
2. Attention: Mr. Binhadi, Bank of Indonesia, Jalan M.H. Thamrin No. 2, Jakarta, Indonesia
Telex No.:
44200 BISIR IA or
46611 BISIR IA
Telefax No.: 62–21–352892
Telephone No.: 62–21–367972
3. Attention: Mr. Ahmad Darsana, Bank of Indonesia, One World Financial Center, 200 Liberty Street, 6th Floor, New York, NY 10281
Telefax No.: 212/945–1316
Telephone No.: 212/945–1310 or 1315

Interested lenders should contact the Borrower as soon as possible and indicate their interest in providing financing for the Housing Guaranty Program. Interested lenders should submit their bids to all of the Borrower's representatives by Tuesday, August 25, 1992, 12 noon Eastern Standard Time. Bids should be open for a period of 48 hours from the bid closing date.

Copies of all bids should be simultaneously sent to the following:

Mr. William Frej, Housing and Urban Development Officer, USAID/Indonesia Box 4, APO AP 96520 (Street address: Jl Medan Merdeka Selatan No. 5 Jakarta, Indonesia)
Telex No.: 44218 AMEMB IA
Telefax No.: 62–21–380–6694 (preferred communication)
Telephone No.: 62–21–360–360 Ext. 2309
Mr. David Grossman, Agency for International Development, Office of Housing and Urban Programs, PRE/H, room 401, SA–2, Washington, DC 20523–0214
Telex No.: 892703 AID WSA
Telefax No.: 202/663–2552 (preferred communication)
Telephone No.: 202/663–2557

For your information the Borrower is currently considering the following terms:

(1) *Amount:* U.S. $25 million.

(2) *Term:* Up to 30 years.

(3) *Grace Period:* Ten years on repayment of principal. If variable interest rate, repayment of principal to amortize in equal, semi-annual installments over the remaining life of the loan. If fixed interest rate, semi-annual level payments of principal and interest.

(4) *Interest Rate:* Alternatives of fixed and variable rates are requested.

(a) *Fixed Interest Rate:* If rates are to be quoted based on a spread over an index, the lender should use as its index a long bond such as the 8% U.S. Treasury Bond due November 15, 2021. Such rate is to be set at the time of acceptance.

(b) *Variable Interest Rate:* To be based on the six-month British Bankers Association LIBOR, preferably with terms relating to Borrower's right to convert to fixed. The rate should be adjusted weekly.

(5) *Prepayment:* Offers should include options for prepayment and mention prepayment premiums, if any.

(6) *Fees:* Offers should specify the placement fees and expenses, including A.I.D. fees, Paying and Transfer Agent fees, out of pocket expenses, etc. Lenders are requested to include all legal fees in their placement fee. Such fees and expenses shall be payable at closing from the proceeds of the loan.

(7) *Closing Date:* Estimated 60 days from date of selection of lender.

Selection of investment bankers and/or lenders and the terms of the loan are initially subject to the individual discretion of the Borrower and thereafter subject to approval by A.I.D. Disbursements under the loan will be subject to certain conditions required of the Borrower by A.I.D. as set forth in agreements between A.I.D. and the Borrower.

The full repayment of the loans will be guaranteed by A.I.D. The A.I.D. guaranty will be backed by the full faith and credit of the United States of America and will be issued pursuant to authority in section 222 of the Foreign Assistance Act of 1961, as amended (the "Act").

Lenders eligible to receive an A.I.D. guaranty are those specified in section 238(c) of the Act. They are: (a) U.S. citizens; (2) domestic U.S. corporations, partnerships, or associations substantially beneficially owned by U.S. citizens; (3) foreign corporations whose share capital is at least 95 percent owned by U.S. citizens; and, (4) foreign partnerships or associations wholly owned by U.S. citizens.

To be eligible for an A.I.D. guaranty, the loans must be repayable in full no later than the thirtieth anniversary of the disbursement of the principal amount thereof and the interest rates may be no higher than the maximum rate established from time to time by A.I.D.

Information as to the eligibility of investors and other aspects of the A.I.D. housing guaranty program can be obtained from:

Mr. Peter M. Kimm, Director, Office of Housing and Urban Programs, Agency for International Development, room 401, SA–2, Washington, DC 20523–2014, Telephone: 202/663–2530.

Dated: August 7, 1992.

Michael G. Kitay,

Assistant General Counsel, Bureau for Private Enterprise, Agency for International Development.

[FR Doc. 92–19176 Filed 8–10–92; 8:45 am]

BILLING CODE 6116–01–M

COMMISSION ON CIVIL RIGHTS

Amendment to Notice of Public Meeting of the Delaware State Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Delaware State Advisory Committee previously announced at FR Doc. 92–17602, Vol. 57 #144 will convene at 10:30 a.m. and adjourn at 1 p.m. on Friday, August 14, 1992, at J.C. Boggs Federal Building, General Services (GSA) Conference Room 3207–09, 844 King Street, Wilmington, DE 19801.

Dated at Washington, DC, August 4, 1992.

Carol-Lee Hurley,

Chief Regional Programs Coordination Unit.

[FR Doc.92–19043 Filed 8–10–92; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Action Affecting Export Privileges; Instrubel, N.V. and OIP, N.V.

In the matter of Instrubel, N.V., Westerring 19, B–9700 Oudenaarde, Belgium and OIP, N.V., Westerring 21, B–9700 Oudenaarde, Belgium.

Order Revoking Temporary Denial Order

On February 22, 1991, then Assistant Secretary for Export Enforcement, Quincy M. Krosby, issued a temporary denial order (TDO) for 180 days naming Delft Instruments N.V., located in the Netherlands, also known as Oldelft, Old Delft, Olde Delft, Oude Delft (hereinafter referred to as Delft); Delft Instruments Electro-Optics, Delft Electronische Products and Optische Industrie Oude Delft; OIP Instrubel, a Delft subsidiary located in Belgium, and Franks & Co. Optik GmbH [1] a Delft subsidiary located in Germary, as persons temporarily denied all U.S. export privileges. 56 FR 8321 (February 28, 1991).

On August 21, 1991, then-Acting Assistant Secretary for Export Enforcement, Kenneth A. Cutshaw, renewed that TDO for 90 days and modified it to name specifically all of Delft's 47 subsidiaries as persons related to Delft and, as such, also denied export privileges. 56 FR 42977 (August 30, 1991).[2] On November 19, 1991, I renewed the TDO for an additional 90 days, limiting it, however to seven of Delft's defense-related subsidiaries. 56 FR 60085 (November 27, 1991). On February 13, 1992, I renewed the TDO for 180 days, limiting it to only two of Delft's defense-related subsidiaries, Instrubel, N.V. and OIP, N.V. 57 FR 6583 (February 26, 1992).

On August 4, 1992, the Department entered an Order, pursuant to section 11(h) of the Export Administration Act of 1979, as amended (currently codified at 50 U.S.C.A. app. §§ 2401–2420 (1991)) (Act),[3] denying the export privileges of Instrubel, N.V. and OIP, N.V. for a period of 7 years. The section 11(h) Order continues in effect for seven years the denial of export privileges imposed pursuant to the TDO.

In view of the foregoing, I find that the TDO is no longer necessary in the public interest to prevent an imminent violation of the Export Administration Regulations (currently codified at 15 CFR parts 768–799 (1991)).

Accordingly, *it is hereby Ordered.*

First, effective August 4, 1992, the TDO presently in effect against Instrubel, N.V. Westerring 19, B–9700 Oudenaarde, Belgium and OIP NV Westerring 21, B–9700 Oudenaarde, Belgium, is hereby revoked, having been effectively replaced by an Order pursuant to Section 11(h) of the Act.

Second, a copy of this Order shall be served on Instrubel, N.V. Westerring 19, B–9700 Oudenaarde, Belgium and OIP NV Westerring 21, B–9700 Oudenaarde, Belgium.

Third, a copy of this Order shall be published in the **Federal Register.**

This order is effective immediately.

Entered this 4th day of August, 1992.

Douglas E. Lavin,

Acting Assistant Secretary for Export Enforcement.

[FR Doc. 92–19044 Filed 8–10–92; 8:45 am]

BILLING CODE 3510–DT–M

[1] Since the time the TDO was originally issued, I have learned that the correct spelling of "Franks & Co. Optik GmbH" is "Franke & Co. Optik GmbH."

[2] The TDO was modified again on October 19, 1991 to delete B.V. Enraf-Nonius Ermelo as a person related to Delft, based on evidence proffered by Delft that it had sold that entity. 56 FR 55491 (October 26, 1991).

[3] The Act expired on September 30, 1990. Executive Order 12730 (55 FR 40373, October 2, 1990) continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. 1701–1706 (1991)).

Action Affecting Export Privileges; Instrubel, N.V. and OIP, N.V.

In the matter of Instrubel, N.V., Westerring 19, B–9700 Oudenaarde, Belgium and OIP, N.V., Westerring 21, B–9700 Oudenaarde, Belgium.

Order Denying Permission To Apply For or Use Export Licenses

On July 17, 1992, Delft Instruments, N.V. (hereinafter referred to as Delft) was convicted in the U.S. District Court for the District of Columbia of two counts of violating the Arms Export Control Act, 22 U.S.C. 2778. The conviction followed Delft's plea of guilty to a criminal indictment charging it with, *inter alia*, reexporting certain articles from Belgium to Iraq and Jordan without having obtained the required authorizations from the Department of State. Delft pleaded guilty to the indictment despite the fact that the acts giving rise to the charges contained therein were committed by certain employees of two Delft subsidiaries (hereinafter referred to as Instrubel, N.V. and OIP, N.V.), because, pursuant to United States law and the facts and the circumstances of the criminal case, Delft is criminally responsible for the actions charged in the indictment.

Section 11(h) of the Export Administration Act of 1979, as amended (currently codified at 50 U.S.C. app. §§ 2401–2420 (1991)) (EAA),[1] provides that, at the discretion of the Secretary of Commerce,[2] no person convicted of a violation of the AECA, or certain other provisions of the United States Code, shall be eligible to apply for or use any export license issued pursuant to, or provided by, the EAA or the Export Administration Regulations (currently codified at 15 CFR parts 768–799 (1991)) (the Regulations), for a period of up to 10 years from the date of the conviction. In addition, any export license issued pursuant to the EAA in which such a person had any interest at the time of his conviction may be revoked. Further, under section 11(h), the Secretary of Commerce may also exercise the authority granted thereunder with respect to any person related, through affiliation, ownership, control, or position of responsibility, to any person convicted of violating the EACA, upon a showing of such a relationship with the convicted person.

Pursuant to §§ 770.15 and 772.1(g) of the Regulations, upon notification that a person has been convicted of violating the EAA, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, shall determine whether to deny that person permission to apply for or use any export license issued pursuant to, or provided by, the EAA and the Regulations, and shall determine whether to revoke any export license previously issued to such a person. In addition, after notifying, through the Chief Counsel for Export Administration, a person related to the convicted party of the intent of the Director, Office of Export Licensing, to deny that person permission to apply for or use any export license, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, may apply any such denial or revocation to the related person or persons.

I have been notified of Delft's conviction for violating the AECA based on the acts of employees of Instrubel, N.V., and OIP, N.V., and I have consulted with the Director, Office of Export Enforcement, regarding action to be taken consistent with Section 11(h) of the EAA. I have decided that the purposes of Section 11(h) of the EAA will be served by denying the permission of Instrubel, N.V. and OIP, N.V. to apply for or use any export license, including any general license, issued pursuant to, or provided by, the EAA and the Regulations for a period of seven years from the date of Delft's conviction. That period ends on July 17, 1999. I take this action against Instrubel, N.V. and OIP, N.V. as parties related to Delft, the convicted party, through affiliation, ownership, control, or position of responsibility and, as the Delft subsidiaries directly involved in the activity leading to the conviction. I have also decided to revoke all export licenses issued pursuant to the EAA in which Instrubel, N.V. and OIP, N.V. had an interest at the time of Delft's conviction. I have decided not to extend the denial to Delft because it did not directly commit the acts which gave rise to the charges in the indictment and because it has instituted an export control system that I believe, if adhered to, should prevent future violations like those alleged in the indictment.

This action is in accordance with an agreement between the Department and Delft.

Accordingly, *it is hereby Ordered.*

I. All outstanding individual validated licenses in which either Instrubel, N.V. or OIP, N.V. appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Instrubel, N.V.'s and OIP, N.V.'s privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

II. Until July 17, 1999, Instrubel, N.V., Westerring 19 B–9700 Oudenaarde, Belgium, and OIP, N.V., Westerring 21 B–9700 Oudenaarde, Belgium, hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction in the United States or abroad involving any commodity or technical data exported or to be exported from the United States, in whole or in part, and subject to the Regulations. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity:

(i) As a party or as a representative of a party to any export license application submitted to the Department;

(ii) In preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith;

(iii) In obtaining from the Department or using any validated or general export license, reexport authorization or other export control document;

(iv) In carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported or to be exported from the United States, and subject to the Regulations; and

(v) In financing, forwarding, transporting, or other servicing of such commodities or technical data.

III. As provided in §787.12(a) of the Regulations, without prior disclosure of the facts to and specific authorization of the Office of Export Licensing, in consultation with the Office of Export Enforcement, no person may directly or indirectly, in any manner or capacity:

(i) Apply for, obtain, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to an export or reexport of commodities or technical data by, to, or for another person then subject to an order revoking or denying his export privileges or then excluded from practice before the Bureau of Export Administration; or

[1] The Act expired on September 30, 1990. Executive Order 12730 (55 FR 40373, October 2, 1990) continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. 1701–1706 (1991)).

[2] Pursuant to appropriate delegations of authority that are reflected in the Regulations, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, exercises the authority granted to the Secretary by section 11(h) of the EAA.

(ii) Order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate:

(a) In any transaction which may involve any commodity or technical data exported or to be exported from the United States;

(b) In any reexport thereof; or

(c) In any other transaction which is subject to the Regulations, if the person denied export privileges may obtain any benefit or have any interest in, directly or indirectly, any of these transactions.

IV. This order is effective immediately and shall remain in effect until July 17, 1999.

V. A copy of this Order shall be delivered to OIP Instrubel, N.V. and OIP, N.V. This Order shall be published in the **Federal Register.**

Dated: August 4, 1992.

Iain S. Baird,

Director, Office of Export Licensing.

[FR Doc. 92-19045 Filed 8-10-92; 8:45 am]

BILLING CODE 3510-DT-M

Disposition of Section 232 National Security Import Investigation of Gears and Gearing Products

AGENCY: Office of Industrial Resource Administration, Bureau of Export Administration, Commerce.

SUMMARY: The Secretary of Commerce has determined that imports of gears and gearing products do not present a threat to U.S. national security. Therefore, the President will not take any action to adjust imports under the terms of section 232. Also included is an Executive Summary of the Department's Section 232 investigation report to the President.

FOR FURTHER INFORMATION CONTACT: John A. Richards, Deputy Assistant Secretary for Industrial Resource Administration, Room H3878, U.S. Department of Commerce, Washington, DC 20230, (202) 377-4506.

SUPPLEMENTARY INFORMATION: On October 31, 1991, the Bureau of Export Administration initiated an investigation of the impact of imports of gears and gearing products on the national security. The Department announced this action in the **Federal Register** on November 6, 1991 (56 FR 56626) and solicited public comments at that time. This investigation was made pursuant to a petition brought by the American Gear Manufacturers Association under the terms of Section 232 of the Trade Expansion Act of 1962, as amended. The Department had 270 days (in this case until July 27, 1992) to submit a report of its investigation to the President.

On July 24, 1992, the Department submitted its investigation report to the President. The investigation found that gears and gearing products were not being imported into the United States in such quantities or under such circumstances as to represent a threat to the national security. Therefore, the President will not take any action to adjust imports under the terms of section 232. The Department reached this determination based on: (1) Anticipated substantial decreases in defense gear requirements; (2) the low and relatively stable level of defense gear imports; (3) the U.S. industry's continuing technological competitiveness; and (4) DOD's continuing efforts to address sector-specific national security gear supply concerns when they have occurred.

The Department recommended, however, that the following actions be taken to address other issues that arose during this investigation: (1) That (in fulfillment of President Bush's April 1990 policy on Military Offsets) consultations be initiated with foreign governments to examine the extent to which offset and/or coproduction commitments have mandated increased defense gear imports and raised national security concerns about the future viability of U.S. defense gear suppliers; (2) that the Department of Defense continue its significant effort to support defense-critical gear industry research, and that it continue to encourage its contracts and their independent gear suppliers to develop a cooperative sustainable partnership; and (3) made a number of other technical recommendations discussed in detail in the Executive Summary below.

Commerce's Bureau of Export Administration (BXA) organized an interagency team of experts for this study effort, and conducted a comprehensive survey of all identifiable gear producers and importers. The survey covered such topics as shipments, employment, R&D, investment, and defense capabilities. We supplemented this information with additional independent research, and a review of earlier public- and private-sector industry studies.

From a military perspective, we found that gears are critical to both the construction and performance of nearly all weapon systems, either as components of the many different machines required to produce a particular weapon system, or as components of the weapon system themselves. Our investigation focused on the aerospace and marine gear sectors. These sectors represent only about 10 percent of gear industry shipments, but about 85 percent of defense gear shipments.

The text of the Commerce report (excluding business proprietary information) will be made available for public review and duplication in the Bureau of Export Administration's Public Reference Room, room 4525, U.S. Department of Commerce, Washington, DC 20230, (202) 377-2593. The Executive Summary follows below.

James M. LeMunyon,

Acting Assistant Secretary for Export Administration.

Executive Summary

On October 17, 1991, the American Gear Manufacturers Association (AGMA) petitioned the Department of Commerce (DOC) to conduct an investigation under section 232 of the Trade Expansion Act of 1962, as amended, to determine the effect of imports of gears and gearing products on the national security. Under the terms of section 232, the President has authority to "adjust imports," should he concur with a DOC finding that a national security threat is present.

In its petition, the AGMA asserted that "the U.S. gear industry has filed (its) petition to illustrate the importance of our industry to the nation as a whole and promote action to ensure its continued viability." AGMA requested that "the entire range of remedies available under (section 232) be examined and appropriate measures implemented," and further stated that "the U.S. gear industry seeks to avoid further deterioration by establishing a partnership with government to gain an equal footing with foreign competitors."

Section 232(d) of the Act directs us to review the "domestic production for projected national defense requirements" and "the capacity of domestic industries to meet such requirements," among other factors. To meet these criteria, we focused our investigation on the Department of Defense's (DOD) statement that it requires an internationally competitive technically advanced gear production base able to participate in the development and production of state-of-the art weapon systems.

BXA organized an interagency team of experts for this study effort, and conducted a comprehensive survey of all identifiable gear producers and importers. Due to the indefinite lapse of the Defense Production Act, we conducted this survey without mandatory data collection authority. As a result, some of the most important gear producers and importer/end-users

chose not to provide the requested information.

As basic components of most industrial machinery and equipment construction and agricultural equipment, motor vehicles, ships, and aircraft of all types, gear are critical to the industrial base. From a military perspective, gears are critical to both the construction and performance of nearly all weapon systems, either as components of the many different machines required to produce a particular weapons system, or as components of the weapon systems themselves.

The gear industry is customarily divided into four sectors: motor vehicle, general industrial, aerospace, and marine. The latter two sectors represent only about 10 percent of gear industry shipments, but about 85 percent of defense gear shipments. Captive producers represent about 75 percent of gear industry shipments, but only about 25 percent of marine gear and 40 percent of aerospace gear shipments.

Competitive Factors

U.S. gear industry performance has declined markedly since the early 1980s. This decline can be explained based on a combination of factors including: the relative competitiveness of the U.S. gear industry; the decline of U.S. gear end-users (*i.e* increased gear 'imports' embedded in foreign-built finished products); technological advances that have led to the decreasing use of gears in end-products; lagging investment in R&D and foreign government activities in support of their domestic gear industries. Recent exchange rate movements have, however, worked in a countervailing direction to increase the relative competitiveness of U.S. gear producers.

Gear producers responding to our industry survey are notably optimistic about their future competitiveness. Sixty-five percent of companies responding believe their competitive prospects will improve over the next five years, 18 percent believe competitiveness will "stay the same," and only an additional 18 percent believe that competitive prospects will decline. Further, about half of U.S. companies responding to our gear producers survey reported that their companies possessed technology equal to or better than their major foreign competitors.

Commerce gear industry experts believe that it is unlikely that alternative technologies will replace gears in the most critical defense applications any time in the foreseeable future. For the larger market, it is likely that worldwide gear consumption will continue modest growth, despite the development of alternative technologies, as new markets replace the old.

Gear research and development (R&D) is critical to maintaining both the technical superiority and cost-effectiveness of U.S. weapon systems. Joint DOD/industry funding of a very active aerospace gear R&D program, for example, has allowed us to maintain technical leadership for gear systems used in helicopters and other aerospace systems. U.S. gear R&D has, however, trailed significantly behind the industry's international competitors, and also behind the average for all U.S. manufacturers.

Our foreign trading partners also maintain a series of trade barriers that can potentially pose impediments to U.S. gear exports. Although most foreign governments claim that they offer no support targeted to their domestic gear industries, other broad-based industry supports and/or support to major gear-consuming industries may be detrimental to the viability of the U.S. gear industry.

Economic and Trade Data

Overall gear industry shipments followed a downward trend over the 1988 to 1991 period. In contrast, the marine sector showed strong growth in 1991 over very low 1988 levels, and the aerospace sector showed only a modest decline.

Industry-wide imports accounted for a growing percentage of new gear supply (domestic shipments plus imports), rising from 13.5 percent to 18.0 percent over the four year period. In the aerospace and marine sectors, however, imports were flat over this period.

Defense shipment data were reported by companies responding to our producer and importer/end-user surveys. Due to the intermediate nature of gear products—*i.e.*, they are incorporated into finished goods, it is likely that many producers are unaware of the ultimate end-use of their products. It is, therefore, probable that the reported defense share of gear shipments and imports is understated.

Reported defense shipments represented a substantial majority of gear shipments by the aerospace and marine gear sectors, but only around two percent of shipments by the automotive and industrial sectors. The reported import share of defense new supply was less than five percent, and stable over the survey period.

Although the gear industry has shown a steady decline in production worker employment, there has been a continuous increase in total output and productivity (measured as output per employee hour) as reported for the more aggregate Standard Industrial Classification code 35 (machinery, except electrical).

The Department of Labor cautions that continued declining employment in the gear industry will accelerate the loss of skills. While the supply of unskilled workers available to the gear industry is adequate to meet current and anticipated needs, the availability of skilled workers in a national security emergency is problematic.

Government Programs

The United States government has several programs and regulations in place that affect the gear industry. DOD, in particular, operates several grant programs through which it has provided significant support for gear industry R&D required to support the DOD's national security objectives.

A variety of other government programs available to assist the gear industry's revitalization efforts include: DOC/International Trade Administration export promotion, DOC/Economic Development Administration efforts to assist communities in adjusting to decreased defense procurements, and Small Business Administration business loans, among others.

The majority of gear producers responding to our survey stated that their competitiveness had been affected by the need to adjust their firm's business practices in response to U.S. government policies. Company concerns focused on procurement-specific problems, as well as on broader issues.

When producers were asked what adjustments should be made in U.S. Government policies, the largest number of companies suggested the reinstatement of tax incentives for capital investment. A large number of companies also asked for the institution of "Buy American" preferences on government gear procurements, and for tougher enforcement of the unfair trade laws.

National Security Analysis

Due to recent substantial changes in the national security challenges facing the United States, it was not possible to develop a quantitative estimate of national security requirements for gears and gearing products to be incorporated into this investigation.

In lieu of such requirements, DOD was able to inform us that it anticipates that gear requirements will be substantially decreased in the near future as procurement is cut back by as much as half. Defense officials emphasized that

the most likely contingencies would be for 'come as you are' regional conflicts such as Desert Storm, which would require that DOD be able to rely on a 'warm' industrial base prepared to meet unpredictable increases in short-term defense requirements.

Surge production capacity for a given year is defined as the maximum realistic level of production that a manufacturing establishment can achieve during a twelve month period. In the more defense-intensive aerospace and marine sectors, estimated surge production capacity increased only 54 percent and 53 percent respectively during the twelve month period. In the less defense-intensive gear sectors, industrial and automotive gear producing establishments reported an ability to increase capacity 135 percent and 132 percent respectively over twelve months.

Gear products and processes are, however, generally not fungible between the various gear sectors. This is particularly relevant for the defense-intensive marine and aerospace sectors which require greater precision and a great commitment of capital, labor and time than the industrial and automotive sectors.

Total reported lead times (from initial receipt of a customer's gear order to delivery) ranged from just seven weeks to more than three years. Generally, the higher the precision, the longer the lead time. The average lead time for defense gear orders was nearly 28 weeks, with marine gears having the longest lead times.

Companies responding to our producer survey were asked to identify and rank in order the top five bottlenecks affecting their ability to ramp-up to production capacity. Heat treatment was the bottleneck mentioned most often, followed closely by gear grinding and gear blank production. In a period of long-term declining demand for defense gears, it becomes increasingly difficult to justify maintaining excess capacity able to meet highly-demanding, and more costly defense specifications.

For the automotive and industrial gear sectors, defense gear usage is small, and it is likely that ample gear capacity would be available to meet needs during a national security emergency. In the more defense-intensive aerospace and marine gear sectors, however, it is possible that sufficient capacity may not be available to meet national security gear requirements.

However, it is unlikely that imports have significantly impacted the gear industry's ability to meet national security gear requirements. Imports as a percentage of new supply have been stable over the 1988–91 period in the aerospace gear sector, and have actually declined over this period in the marine gear sector. Imports as a share of defense new supply for these sectors have been even lower and have also been stable over this period.

The decline of the commercial gear sector, combined with the prospect of significant decreases in defense procurement, increases the economic pressure on U.S. gear producers. If these trends continue, the United States may become dependent on foreign countries for defense-critical gears in some industry sectors. There are both benefits and costs to relying on foreign suppliers for gears and other defense-critical components.

Allegations were made by U.S. gear producers that U.S. bidders had been disqualified from European gear procurements based upon their nationality. Details of these allegations have been provided to the appropriate DOD official who intends to seek resolution from his European counterparts.

Several independent gear producers further alleged that particular U.S. prime contractors have informed them that they will stop sourcing gears from independent U.S. producers by the end of 1994. U.S. primes denied that they intend to change their gear supplier mix, but emphasized that they must be certain of the long-term viability of gear suppliers.

U.S. primes further noted that some foreign gear suppliers have both sufficient financial resources to provide the necessary financing (*i.e.* to become risk/revenue sharing partners), and the production capability to reliably produce other low-compression aircraft engine components. Primes caution that it would take an average of two years to qualify new gear sources at Federal Aviation Administration and DOD standards if forced to abandon joint venture relationships with offshore producers.

We conclude that the substantial cost of system development leaves U.S. prime contractors with little alternative to seeking offshore risk/revenue sharing partners. In attempting to alleviate the national security concerns raised by the declining gear production base, we should ensure that we do not weaken prime contractors and thereby impose a substantial national security cost. However, it is at the same time important for the U.S. to maintain a competitive and technologically viable domestic gear production base.

Findings and Recommendations

The Department of Commerce does not find that gears and gearing products are being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security.

The Department reached this finding based on: (1) Anticipated substantial decreases in defense procurements which will likely lead to significantly decreased defense gear requirements; (2) the low and relatively stable level of imports in the defense-intensive aerospace and marine gear markets; (3) the U.S. industry's continuing technological competitiveness and its optimism about its future competitiveness; and (4) the Department of Defense's proven record and continuing commitment to address sector-specific national security gear supply concerns when they may occur.

In light of the negative finding above, we do not include any recommendations to "adjust imports." We recommend the following, however, to address ancillary issues that arose during this investigation:

1. In fulfillment of President Bush's April 1990 Policy on Offsets in Military Exports, we recommend that consultations be initiated with foreign governments to examine the extent to which offset and/or coproduction commitments have led U.S. prime contractors to source gear products from foreign suppliers to the extent of raising national security concerns about the future viability of U.S. defense gear suppliers.

2. We encourage the Department of Defense to carefully consider the national security issues raised within this report, and recommend that it continue its significant effort to support defense-critical gear industry research.

3. We recommend that the Department of Defense continue to encourage its contractors and their independent gear suppliers to develop a cooperative sustainable partnership. This is particularly significant in light of assertions that important U.S. prime contractors intend to cease purchasing gears from independent U.S. gear producers by the end of 1994. These assertions could not conclusively be either confirmed or denied during the Section 232 investigation.

4. We urge the DOD-led Defense Conversion Commission to study the impact of declining military budgets and major weapons system terminations on domestic gear producers and other key subcontractor industries. In addition, the Commission should examine the

potential to convert excess defense-dedicated production lines and employees to commercial products.

5. We recommend that the DOC's Economic Development Administration continue its contacts with the U.S. gear industry to provide technical assistance to the industry in its defense conversion efforts.

6. We reiterate the recommendation in our January, 1991 National Security Assessment of the U.S. Gear Industry that the industry take the initiative to consolidate into larger more technologically efficient firms that can both afford and justify investment in the latest technologies.

7. We further reiterate our recommendation that U.S. government and AGMA statistical representatives continue to work to rectify current data shortcomings and to explore the need for better government monitoring of the U.S. gear industry's performance.

[FR Doc. 92-19032 Filed 810-92; 8:45 am]
BILLING CODE 3510-DT-M

International Trade Administration

[C-533-807]

Preliminary Affirmative Countervailing Duty Determination: Sulfanilic Acid From India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 11, 1992.

FOR FURTHER INFORMATION CONTACT: Rick Herring or Magd Zalok, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-3530 or (202) 377-4162, respectively.

PRELIMINARY DETERMINATION:

Case History

On June 3, 1992, the Department published its notice of initiation of the countervailing duty investigation on sulfanilic acid from India (57 FR 23384). Since initiation of this investigation, the following events have occurred. On June 9, 1992, we presented questionnaires to the Government of India. On June 22, 1992, the United States International Trade Commission (ITC) issued its preliminary determination that imports of sulfanilic acid from India threaten material injury to a U.S. industry. On July 20, 1992, we received a response to our questionnaire from the Government of India. On July 29, 1992, we received a response from one Indian producer/exporter of sulfanilic acid.

Scope of Investigation

The products covered by this investigation are all grades of sulfanilic acid, which includes technical (or crude) sulfanilic acid, refined (or purified) sulfanilic acid, and refined sodium salt or sulfanilic acid (sodium sulfanilate).

Sulfanilic acid is a synthetic organic chemical produced from the direct sulfonation of aniline with sulfuric acid. Sulfanilic acid is used as a raw material in the production of optical brighteners, food colors, specialty dyes, and concrete additives. The principal differences between the grades relate to the amount of undesirable, residual aniline and alkali insoluble materials that are present in the sulfanilic acid. All grades are available as dry, free flowing powders.

Technical sulfanilic acid, classified under the subheading 2921.42.20 of the Harmonized Tariff Schedule (HTS), contains 96 percent minimum sulfanilic acid, 1.0 percent maximum aniline, and 1.0 percent maximum alkali insoluble materials. Refined sulfanilic acid classified under HTS subheading 2921.42.24.20 contains 98 percent minimum sulfanilic acid, 0.5 percent maximum aniline, and 0.25 percent maximum alkali insoluble materials. Refined sodium salt or sulfanilic acid (sodium sulfanilate), classified under HTS subheading 2921.42.70, is a granular or crystalline material containing 75 percent minimum equivalent sulfanilic acid, 0.5 percent maximum aniline, and 0.25 percent maximum alkali insoluble materials based on the equivalent sulfanilic acid content.

Although the HTS subheadings are provided for convenience and customs purposes, our written description of the merchandise subject to this investigation is dispositive.

Analysis of the Programs

We did not receive responses to our questionnaire from any producer or exporter of sulfanilic acid from India until July 29, 1992, when we received one response. Due to the lateness of the questionnaire response, we are unable to analyze and use it for purposes of this preliminary determination. Therefore, in accordance with 19 CFR 355.37, best information available was used to calculate the estimated net subsidy conferred upon the production and exportation of sulfanilic acid from India.

We used information provided by the petitioner in its petition as best information available. Petitioner estimated that the net subsidy conferred on the production and exportation of sulfanilic acid was 43.71 percent *ad valorem*. Petitioner based this estimation on the Preliminary Affirmative Countervailing Duty Determination: Bulk Ibuprofen From India (*Ibuprofen*) (56 FR 66432, December 23, 1991). In support of this estimation, petitioner stated that "ibuprofen and sulfanilic acid are similar in that they are both organic chemicals requiring similar manufacturing facilities and chemical synthesis steps to arrive at the finished product." Petitioner further stated that it is "reasonable to expect that if these subsidies are available to ibuprofen production and exportation in India that the same subsidies are available to the production and exportation of sulfanilic acid."

Although the petitioner's estimation of the subsidy was based on a preliminary determination, the Department believes that the *Ibuprofen* determination constitutes the best information available to determine the estimated net subsidy conferred upon the production and exportation of Indian sulfanilic acid. Both products, ibuprofen and sulfanilic acid, are part of the chemicals industry, while other recently completed Department investigations and administrative reviews focused on products which are part of the steel and metals industry. The major subsidy program in those investigations was the "International Price Reimbursement Scheme (IPRS)," which provided Indian companies with rebates based on the difference between higher domestic and lower international prices for steel inputs. Clearly, this program is not applicable to the chemicals industry.

More importantly, there are similarities in the manufacturing facilities and processes for ibuprofen and sulfanilic acid which suggest that the level of subsidization found in *Ibuprofen* is the most appropriate source of best information available. The major subsidy program found in *Ibuprofen* was the "Import Duty Exemptions Available Through Advance Licenses," a program also alleged in the present investigation. Under this program, advance licenses are available to exporters to enable them to import raw material inputs used in the production of exports duty-free. In *Ibuprofen*, we found that some of the chemicals imported duty-free by producers or ibuprofen were not physically incorporated into the product. We calculated the subsidy for this program to be 33.72 percent. Information on the record of this investigation indicates that producers of sulfanilic acid use this program to import an input, aniline, duty-free. In addition,

information on the record of this investigation indicates that aniline is not physically incorporated into sulfanilic acid for purposes of the countervailing duty law. Therefore, the program used in *Ibuprofen* which accounted for approximately 80 percent of the duty deposit rate appears also to be providing a similar benefit to Indian producers of sulfanilic acid.

For these reasons, we believe that the estimated net subsidy calculated in *Ibuprofen* constitutes best information available. Therefore, we determine an estimated net subsidy of 43.71 percent *ad valorem* for all producers and exporters in India of sulfanilic acid.

Suspension of Liquidation

In accordance with section 703(d) of the Tariff Act of 1930, as amended (the Act), we are directing the U.S. Customs Service to suspend liquidation of all entries of sulfanilic acid from India which are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**, and to require a cash deposit or bond for all entries of this merchandise equal to 43.71 percent *ad valorem* for sulfanilic acid from all producers and exporters in India.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files provided that the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

Our final determination is scheduled for October 15, 1992. If our final determination is affirmative, the ITC will make its final determination within 45 days after the Department's final determination.

Public Comment

In accordance with 19 CFR 355.38, we will hold a public hearing, if requested, on September 24, 1992, at 10:30 p.m. in Room 1617M–4, to afford interested parties the opportunity to comment on this preliminary determination. Interested parties who wish to request or to participate in the hearing must submit a request within ten days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B–099, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of issues to be discussed. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

In addition, ten copies of the business proprietary version and five copies of the non-proprietary version of the case briefs must be submitted to the Assistant Secretary no later than September 14, 1992. Ten copies of the business proprietary version and five copies of the non-proprietary version of rebuttal briefs must be submitted to the Assistant Secretary no later than September 21, 1992. An interested party may make an affirmative presentation only on arguments included in that party's case or rebuttal brief. If no hearing is requested, interested parties still may comment on these preliminary results in the form of case and rebuttal brief. Written arguments should be submitted in accordance with 355.38 of the Commerce Department's regulations and will be considered if received within the time limits specified above.

This determination is published pursuant to section 703(f) of the Act (19 U.S.C. 1671b(f)) and 19 CFR 355.15.

Dated: July 31, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92–18960 Filed 8–10–92; 8:45 am]

BILLING CODE 3510-DS-M

National Institute of Standards and Technology

[Docket No. 920488–2088]

RIN 0693–AB02

Proposed Procedures for Registering Computer Security Objects

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice; request for comments.

SUMMARY: The purpose of this notice is to announce the proposed General Procedures for Registering Computer Security Objects. The Registration Procedures will apply to the development of a Computer Security Objects (CSO) Register. Computer security objects are resources, tools, or mechanisms used to maintain a condition of security in computerized environments. Initially, only two families of CSOs will be registered, network security labels and cryptographic algorithms. The CSO Register will assist in:

—Establishing unique names for managed Computer Security Objects (CSO) that will be used in Distributed Information Processing Systems;

—Providing a means of specifying parameters, and semantics associated with named CSOs;

—Encouraging the implementation and support of widely used CSOs, thus promoting interoperability.

Future Federal Information Processing Standards (FIPS) on computer security, such as a Standard Security Label, will rely on the establishment of the CSO Register.

Prior to adoption of these procedures, it is essential to assure that consideration is given to the needs and views of manufacturers, the public, and State and local governments. The purpose of this notice is to solicit such views.

Interested parties may obtain copies of the procedures for registering computer security objects from the Standards Processing Coordinator (ADP), National Institute of Standards and Technology, Technology Building, Room B64, Gaithersburg, MD 20899, telephone (301) 975–2816.

DATES: Comments on the proposed procedures must be received on or before November 9, 1992.

ADDRESSES: Written comments concerning the proposed procedures should be sent to: Director, Computer Systems Laboratory, ATTN: Computer Security Objects Register, Technology Building, room B154, National Institute of Standards and Technology, Gaithersburg, MD 20899.

Written comments received in response to this notice will be made part of the public record and will be made available for inspection and copying in the Central Reference and Records Inspection Facility, room 6020, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Mr. Noel Nazario, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone (301) 975–2837.

SUPPLEMENTARY INFORMATION: The need for a Computer Security Objects Register arises from the complexity of the communications process between computers. Communications protocols that enable two systems to support different options provided to meet a variety of applications and requirements. The two systems that

wish to communicate must agree in advance on the communication options within the protocols that will be used. In secure communications, the two systems that wish to communicate also must establish the conditions related to the security aspects of the communications before the process takes place.

If data encipherment is required for a communications process, various encryption algorithms could be used depending upon the type of information processed and the level of security required. For instance, if Federal government unclassified information is exchanged, the Federal Information Processing Standard 46–1, Data Encryption Standard (DES) should be used. Since the DES has three different modes of operation (as described in Federal Information Processing Standard 81), the appropriate mode of operation must be specified as well.

The Computer Security Objects Register will assign an unique name to DES encryption algorithm and to each mode of operation. These unique names will be used in the establishment of communications parameters process to specify the proper encryption algorithm and mode of operation. The register will support flexibility and modularity within communication protocols and will provide for unambiguous references to the proper process and parameters needed for secure data exchanges.

Dated: August 4, 1992.

John W. Lyons,

Director.

[FR Doc. 92–18958 Filed 8–10–92; 8:45 am]

BILLING CODE 3510–CN–M

Computer System Security and Privacy Advisory Board Meeting

AGENCY: National Institute of Standards and Technology.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the Computer system Security and Privacy Advisory Board will meet Tuesday, September 15, 1992, Wednesday, September 16, 1992, and Thursday, September 17, 1992, from 9 a.m. to 5 p.m. The Advisory Board was established by the Computer Security Act of 1987 (Pub. L. 100–235) to advise the Secretary of Commerce and the Director of NIST on security and privacy issues pertaining to Federal computer systems. All sessions will be open to the public.

DATES: The meeting will be held on September 15 through 17, 1992, from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will take place at National Institute for Standards and Technology, Quince Orchard and Clopper Road, Gaithersburg MD 20899. Please contact the individual in the "for further information" section to obtain specific building and conference room assignment. Inquiries regarding the Board meeting should not be directed to the conference facility.

AGENDA

—Welcome and Meeting Overview
—Cryptographic Technology Overview
—Cryptographic Review Issues
—Public Participation
—Updates of NIST Security Work
—Discussion of Board's CY–93 Workplan
—New Business
—Close

PUBLIC PARTICIPATION: The Board agenda will include a period of time, not to exceed thirty minutes, for oral comments and questions from the public. Each speaker will be limited to five minutes. Members of the public who are interested in speaking are asked to contact the Board Secretariat at the telephone number indicated below. In addition, written statements are invited and may be submitted to the Board at any time. Written statements should be directed to the Computer System Security and Privacy Advisory Board, Computer Systems Laboratory, Building 225, room B154, National Institute of Standards and Technology, Gaithersburg, MD 20899. It would be appreciated if fifteen copies of written material could be submitted for distribution to the Board by September 9, 1992. Approximately fifteen seats will be available for the public, including three seats reserved for the media. Seats will be available on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Mr. Lynn McNulty, Associate Director for Computer Security, Computer Systems laboratory, National Institute of Standards and Technology, Building 225, room B154, Gaithersburg, MD 20899, telephone: (301) 975–3240.

Dated: August 4, 1992.

John W. Lyons,

Director.

[FR Doc. 92–18959 Filed 8–10–92; 8:45 am]

BILLING CODE 3510–CN–M

National Technical Information Service

Prospective Grant of Exclusive Patent License

This is notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Technical Information Service (NTIS), U.S. Department of Commerce, is contemplating the grant of an exclusive field of use license in the United States and certain foreign countries to practice the inventions embodied in U.S. Patent Nos. 4,851,291 (Serial No. 7–055,476), 4,871,615 (Serial No. 6–818,567) and 4,908,238 (Serial No. 7–371,779), and U.S. Patent Application S.N. 6–876,015, each titled "Temperature Adaptable Textile Fibers and Method of Preparing Same," to Bayshore Holdings, Inc., having a place of business in New York, NY. The patent rights in these inventions have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this publication Notice, NTIS receives written evidence and argument which establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The present inventions consist of temperature adaptable textile fibers in which phase-change or plastic crystalline materials are filled within hollow fibers or impregnated upon non-hollow fibers. The fibers are produced by applying solutions or melts of the phase-change or plastic crystalline materials to the fibers. Cross-linked polyethylene glycol is especially effective as the phase change material, and, in addition to providing temperature adaptability, it imparts improved properties as to soil release, durable press, resistance to static charge, abrasion resistance, pilling resistance and water absorbency.

The availability of S.N. 7–055,476 and S.N. 6–818,567 for licensing were published in the **Federal Register**, Vol. 55, No. 138, p. 29255 (July 18, 1990). The availability of S.N. 6–876,015 for licensing was published in the **Federal Register**, Vol. 54, No. 63, p. 13549 (April 4, 1989). S.N. 7–371,779 is a division of S.N. 7–055,476.

A copy of the instant patent application may be purchased from the NTIS Sales Desk by telephoning 1–800–553–NTIS or by writing to the Order Department, NTIS, 5285 Port Royal Road, Springfield, VA 22161. The issued patents are available for $3. each (payable by check or money order) from the Commissioner of Patents and Trademarks, Box 9, Washington, DC 20231.

Inquiries, comments and other materials relating to the contemplated license must be submitted to Neil L.

Mark, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151. Properly filed competing applications received by the NTIS is response to this notice will be considered as objections to the grant of the contemplated license.

Douglas J. Campion,

Acting Director, Office of Federal Patent Licensing.

[FR Doc. 92–18974 Filed 8–10–92; 8:45 am]

BILLING CODE 3510–04–M

Prospective Grant of Exclusive Patent License

This is notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Technical Information Service (NTIS), U.S. Department of Commerce, is contemplating the grant of an exclusive license in the United States to practice the invention embodied in U.S. Patent No. 4,616,316 (Serial No. 6–458,312), titled "Medication Compliance Monitoring Device Having Conductive Traces upon a Frangible Backing of a Medication Compartment," to Compliance Products, having a place of business in St. Louis, MO. The patent rights in this invention have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The present invention is a medication compliance monitoring system consisting of a blister pack having an array of plastic blisters defining compartments for medication, with frangible nonconductive backing sheet having conductive traces behind the compartments which are respectively ruptured when the medication doses are removed. The blister pack is detachably connected to an electronic memory circuit via a multi-terminal male connector tab on the backing sheet, wired to the conductive traces, and a corresponding female connector with terminals wired to the electronic memory circuit. The electronic memory circuit addresses each individual trace periodically at a constant time interval over a predetermined extended period of time to determine if it is intact. The electronic memory circuit detects the ruptures and stores the time data thereof over said extended period of time. During the patient's follow-up visit a microcomputer is employed to retrieve the dose-removal-time data from the memory circuit; it processes the data and provides a display of the compliance information. A socket adapter is used to alternately configure the electronic memory circuit for data acquisition and extraction. The socket adapter is in the form of a multiple-pin jumper plug engageable in a multi-contact socket connected to the memory circuit. Insertion of the plug configures the memory circuit for data acquisition. Removal of the plug configures the memory circuit for data retrieval and processing by the microcomputer. In a typical embodiment there are 42 blisters whose associated conductive traces are addressed every 15 minutes over an extended time period which may be as much as 85 days.

The availability of S.N. 6–458,312 for licensing was published in the **Federal Register**, Vol. 48, No. 54, p. 11483 (March 18, 1983).

A copy of the instant patent is available for $3 (payable by check or money order) from the Commissioner of Patents and Trademarks, Box 9, Washington, DC 20231.

Inquiries, comments and other materials relating to the contemplated license must be submitted to Neil L. Mark, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151. Properly filed competing applications received by the NTIS in response to this notice will be considered as objections to the grant of the contemplated license.

Douglas J. Campion,

Acting Director, Office of Federal Patent Licensing.

[FR Doc. 92–18975 Filed 8–10–92; 8:45 am]

BILLING CODE 3510–04–M

Prospective Grant of Exclusive Patent License

This is notice in accordance with 35 U.S.C. 20(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Technical Information Service (NTIS), U.S. Department of Commerce, is contemplating the grant of an exclusive license in the United States to practice the invention embodied in U.S. Patent No. 4,616,316 (Serial No. 6–458,312), titled "Medication Compliance Monitoring Device Having Conductive Traces upon a Frangible Backing of a Medication Compartment, "to Compliance Products, having a place of business in St. Louis, MO. The patent rights in this invention have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. the prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The present invention is a medication compliance monitoring system consisting of a blister pack having an array of plastic blisters defining compartments for medication, with a frangible nonconductive backing sheet having conductive traces behind the compartments which are respectively ruptured when the medication doses are removed. The blister pack is detachably connected to an electronic memory circuit via a multi-terminal male connector tab on the backing sheet, wired to the conductive traces, and a corresponding female connector with terminals wired to the electronic memory circuit. The electronic memory circuit addresses each individual trace periodically at a constant time interval over a predetermined extended period of time to determine if it is intact. The electronic memory circuit detects the ruptures and stores the time data thereof over said extended period of time. During the patient's follow-up visit a microcomputer is employed to retrieve the dose-removal-time data from the memory circuit; it processes the data and provides a display of the compliance information. A socket adapter is used to alternately configure the electronic memory circuit for data acquisition and extraction. The socket adapter is in the form of a multiple-pin jumper plug engageable in a multi-contact socket connected to the memory circuit. Insertion of the plug configures the memory circuit for data acquisition. Removal of the plug configures the memory circuit for data retrieval and processing by the microcomputer. In a typical embodiment there are 42 blisters whose associated conductive traces are addressed every 15 minutes over an extended time period which may be as much as 85 days.

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Douglas J. Campion,

Acting Director, Office of Federal Patent Licensing.

[FR Doc. 92–18975 Filed 8–10–92; 8:45 am]

BILLING CODE 3510–04–M

National Oceanic and Atmospheric Administration

Coastal Zone Management; Federal Consistency Appeal by ERA, S.E. From an Objection by the Puerto Rico Planning Board

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of appeal and request for comments.

By letter dated January 23, 1992, Mr. Edward M. Borges filed with the Secretary of Commerce (Secretary) a notice of appeal on behalf of ERA, S.E. (Appellant). The Appellant is appealing to the Secretary under section 307(c)(3)(A) of the Coastal Zone Management Act (CZMA) and the Department's implementing regulations, 15 CFR part 930, subpart H. The appeal is taken from an objection by the Puerto Rico Planning Board (PRPB) to the Appellant's consistency certification that its proposal to reconstruct an existing wooden dock, 8 feet wide by 45 feet long, in Cabeza de Perro, Culebra, Puerto Rico, for which a U.S. Army Corps of Engineers permit must be obtained, is consistent with Puerto Rico's coastal zone management program.

The CZMA provides that a timely objection by a state, including Puerto Rico, to a consistency certification precludes any Federal agency from issuing licenses or permits for the activity unless the Secretary of Commerce finds that the activity is either "consistent with the objectives" of the CZMA (Ground I) or "necessary in the interest of national security" (Ground II). Section 307(c)(3)(A). To make such a determination, the Secretary must find that the proposed project satisfies the requirements of 15 CFR 930.121 or 930.122.

The Appellant requests that the Secretary override the PRPB's consistency objections based on Ground I. To make the determination that the proposed activity is "consistent with the objectives" of the CZMA, the Secretary must find that:

(1) The proposed activity further one or more of the national objectives or purposes contained in sections 302 or 303 of the CZMA;

(2) The adverse effects of the proposed activity do not outweigh its contribution to the national interest;

(3) The proposed activity will not violate the Clean Air Act or the Federal Water Pollution Control Act; and

(4) No reasonable alternative is available that would permit the activity to be conducted in a manner consistent with Puerto Rico's coastal management program. 15 CFR 930.121.

Public comments are invited on the findings that the Secretary must make as set forth in the regulations at 15 CFR 930.121. Comments are due within 30 days of the publication of this notice and should be sent to Ms. Angelica Fleites, Law Clerk, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1825 Connecticut Avenue, NW., suite 603, Washington, DC 20235. Copies of comments will also be forwarded to the Appellant and the State.

All nonconfidential documents submitted in this appeal are available for public inspection during business hours at the offices of the PRPB and the Office of the Assistant General Counsel for Ocean Services.

FOR ADDITIONAL INFORMATION CONTACT: Ms. Angelica Fleites, Law Clerk, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1825 Connecticut Avenue, NW., suite 603, Washington, DC 20235 at (202) 606–4200.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

Dated: August 6, 1992.

Thomas A. Campbell,

General Counsel.

[FR Doc. 92–19046 Filed 8–10–92; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Information Systems Agency Scientific Advisory Group (SAG)

AGENCY: Defense Information Systems Agency.

ACTION: Notice of closed meeting.

The DISA Scientific Advisory Group will hold a closed meeting on September 2–3, 1992, at the Center for Naval Analysis Building, 4401 Ford Avenue, Alexandria, Virginia 22302. The purpose of the meeting is to address technology and management planning issues relating to DoD's information management initiative and DISA's roles and missions. Any persons desiring information about the Advisory Group may telephone, 703–746–3643, or write Associate Director, Defense Information Systems Agency, 701 South Courthouse Road, Arlington, Virginia 22204. This is a closed meeting due to the discussion of classified material which requires protection in the interest of National Defense. (5 U.S.C. 552(c)(1)).

Dated: August 5, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–19033 Filed 8–10–92; 8:45 am]

BILLING CODE 3810–01–M

Department of the Navy

Intent to Grant Exclusive Patent License

AGENCY: Department of the Navy, DoD.

ACTION: Intent to Grant Exclusive Patent License; Adaptive Digital Systems, Inc.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Adaptive Digital Systems, Inc. A revocable, nonassignable, exclusive license to practice the Government-owned invention described in U.S. Patent No. 4,238,746, "Adaptive Line Enhancer" issued December 9, 1980.

Anyone wishing to object to the grant of this license has 60 days from the date of this notice to file written objections along with supporting evidence, if any. Written objections are to be filed with the Office of the Chief of Naval Research (Code OOCCIP), Arlington, Virginia 22217-5000.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Office of the Chief of Naval Research (Code OOCCIP), 800 North Quincy Street, Arlington, Virginia 22217-5000, Telephone (703) 696-4001.

Dated: July 31, 1992.

Wayne T. Baucino,

Lieutenant, JAGC, U.S. Naval Reserve, Alternate Federal Register Liaison Officer.

[FR Doc. 92–18977 Filed 8–10–92; 8:45 am]

BILLING CODE 3810–AE–F

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before September 10, 1992.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Cary Green, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Cary Green (202) 708–5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Management Service, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement;

(2) Title;

(3) Frequency of collection;

(4) The affected public;

(5) Reporting burden; and/or

(6) Recordkeeping burden; and

(7) Abstract.

OMB invites public comment at the address specified above. Copies of the requests are available from Cary Green at the address specified above

Dated: August 5, 1992.

Cary Green,

Director, Information Resources Management Service.

Office of Elementary and Secondary Education

Type of Review: Revision.

Title: State Annual Performance Report for Dwight D. Eisenhower Mathematics and Science Education Act.

Frequency: Annually.

Affected Public: State or local governments; federal agencies or employees.

Reporting Burden: Responses: 104, *Burden Hours:* 3,420.

Recordkeeping Burden: Recordkeepers: 0; *Burden Hours:* 0.

Abstract: State agencies for higher education and State educational agencies that have participated in programs under the Dwight D. Eisenhower Mathematics and Science Education Act are required to submit this report. The Department uses the information to assess the accomplishments of project goals and objectives, and to aid in effective program management.

Office of Postsecondary Education

Type of Review: Revision.

Title: Institutional Quality Control Project Workbook.

Frequency: Annually, Quarterly.

Affected Public: Businesses or other for-profit; Non-profit institutions; Small businesses or organizations.

Reporting Burden: Responses: 200, *Burden Hours:* 39,200.

Recordkeeping Burden: Recordkeepers: 0; *Burden Hours:* 0.

Abstract: The Institutional Quality Control Workbook will be used by financial aid administrators in coordination with the performance of quality control activities related to the institutions' administration of Federal student financial aid programs.

Office of Human Resources Administration

Type of Review: New.

Title: Demands for Testimony or Records in Legal Proceeding.

Frequency: Other.

Affected Public: Individuals or households; State or local governments; farms; businesses or other for-profit; non-profit institutions; small businesses or organizations.

Reporting Burden: Responses: 25; *Burden Hours:* 25.

Recordkeeping Burden: Recordkeepers: 0; *Burden Hours:* 0.

Abstract: This information collection affects people submitting subpoenas to the Department in legislative or administrative proceedings or in litigation in which the United States is not a party. The Department uses the information to determine if compliance is in the interests of the United States and whether employees should comply.

Office of Educational Research and Improvement

Type of Review: New.

Title: Finance Surveys for the National Assessment of Vocational Education.

Frequency: One time.

Affected Public: State or local governments.

Reporting Burden: Responses: 3,598; *Burden Hours:* 17,990.

Recordkeeping Burden: Recordkeepers: 0; *Burden Hours:* 0.

Abstract: This survey will be used to collect data on the financing of vocational education at the secondary and postsecondary state and local level. The Department will use the information to report to Congress.

Office of Educational Research and Improvement

Type of Review: New.

Title: Survey of Vocational Student Organizations for the National Assessment of Vocational Education.

Frequency: One time.

Affected Public: Individuals or households.

Reporting Burden: Responses: 3,396; *Burden Hours:* 2,038.

Recordkeeping Burden: Recordkeepers: 0; *Burden Hours:* 0.

Abstract: This survey will be used to collect data on the involvement of minority students in vocational student organizations. The Department will use the information to report to Congress.

[FR Doc. 92–19014 Filed 8–10–92; 8:45 am]

BILLING CODE 4000–01–M

President's Advisory Commission on Educational Excellence for Hispanic Americans; Meeting

AGENCY: President's Advisory Commission on Educational Excellence for Hispanic Americans, Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the President's Advisory Commission on Educational Excellence for Hispanic Americans. This notice also describes the functions of the Commission. Notice of this meeting

is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATE AND TIME: August 21, 1992—9 a.m. to 5 p.m.

ADDRESSES: The Ritz-Carlton Hotel, 2100 Massachusetts Avenue, N.W., Washington, DC.

FOR FURTHER INFORMATION CONTACT: John Florez, Executive Director, White House Initiative on Educational Excellence for Hispanic Americans, U.S. Department of Education, Washington, DC 20202–7588. Telephone: (202) 205–2420.

SUPPLEMENTARY INFORMATION: The President's Advisory Commission on Educational Excellence for Hispanic Americans is established under Executive Order 12729.

The Commission is established to advise the Secretary of Education on the Education status of Hispanic Americans, including the progress of Hispanic Americans towards achievement of the national educational goals, and on Federal efforts to promote quality education for Hispanic Americans.

On August 21, the Commission will meet in an open session from the 9 a.m. to 5 p.m. The agenda will include: (1) A report on old business; (2) Report on activities from around the nation; and (3) Review and discussion of the draft of the Commission's preliminary report.

Records are kept of all Commission proceedings, and are available for public inspection at the office of the White House Initiative on Educational Excellence for Hispanic Americans, 400 Maryland Avenue, S.W., Washington, DC 20202–7588 from the hours of 8:30 a.m. to 5 p.m.

Dated: August 4, 1992.

Daniel Bonner,

Acting Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 92–19136 Filed 8–10–92; 8:45 am]

BILLING CODE 4000–01–M

Office of Human Resources and Administration

AGENCY: Department of Education.

ACTION: Notice of membership of the Performance Review Board (PRB).

SUMMARY: Notice is hereby given of the names of members of the Department of Education's PRB.

FOR FURTHER INFORMATION CONTACT: Althea Watson, Director, Executive Resources Staff, Personnel Management Service, Office of Human Resources and Administration, Department of Education, room 1187–A, FOB–6, 400 Maryland Avenue SW., Washington, DC 20202, telephone: (202) 401–0546.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of title 4, U.S.C. requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more Senior Executive Service (SES) PRBs. The Board shall review and evaluate the initial appraisal of a senior executive's performance along with any comments by senior executives and any higher level executive and make recommendations to the appointing authority relative to the performance of the senior executive.

The PRB is also responsible for providing recertification recommendations for career SES appointees in accordance with section 3393a of title 5, U.S.C. and 317.504(f) of title 5, Code of Federal Regulations.

Membership

The following executives of the Department of Education have been selected to serve on the Performance Review Board of the Department of Education: Donald A. Laidlaw, Chair, Thomas Skelly, Co-chair, Michael Vader, Mary Jean LeTendre, Alicia Coro, Steven McNamara, John Higgins, Neal Peden-Jones, Barry Stern, Charles Karelis, Carol Cichowski, Maureen McLaughlin, William Smith, Susan Craig, John Haines, Philip Link, Dick Hays, Michelle Easton, J. Bruce Holmberg, and Daniel Bonner. The following executives have been selected to serve as alternate members of the Performance Review Board: John Kristy, Gary Rasmussen, Carl O'Riley, Jeanne Griffith and Richard Komer.

Dated: July 31, 1992.

Donald A. Laidlaw,

Assistant Secretary for Human Resources and Administration.

[FR Doc. 92–19013 Filed 8–10–92; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Intent To Prepare an Environmental Impact Statement and Conduct a Public Scoping Meeting for the Proposed York County Pennsylvania Cogeneration Facility

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS) to assess the environmental effects of the construction and operation of the proposed York County Cogeneration Facility in West Manchester Township, York County, Pennsylvania, and to conduct a public scoping meeting.

SUMMARY: DOE announces its intent to prepare an EIS pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended, to evaluate the environmental impacts of the proposed construction and operation of a project proposed by York County Energy Partners (YCEP) in Pennsylvania. The proposed project involves the construction and operation of a new coal-fired 250-megawatt electric (MWe) (2,000 tons/day) single-train circulating fluidized bed (CFB), a pollution control train consisting of selective non-catalytic reduction (SNCR) for reducing emissions of nitrogen oxides, and a baghouse for reducing emissions of particulates. This facility would be constructed adjacent to The J.E. Baker Company quarry and brick manufacturing operations on land currently owned by the Baker Company. The Baker Company would be the purchaser of the steam generated by this proposed project. The produced electricity would be delivered to Metropolitan Edison Company (Met-Ed).

Preparation of the EIS will be in accordance with NEPA, the Council on Environmental Quality (CEQ) NEPA regulations (40 CFR parts 1500–1508), and the DOE regulations for compliance with NEPA (57 FR 15122, April 24, 1992). The purpose of this notice is to invite public participation in the process that DOE will follow to comply with NEPA, and to solicit public comments on the proposed scope and content of the EIS.

INVITATION TO COMMENT AND DATES: To ensure that the full range of issues related to this proposal is addressed, DOE invites comments on the proposed scope and content of the EIS from all interested parties. Written comments or suggestions to assist DOE in identifying significant environmental issues and the appropriate scope of the EIS will be considered in preparing the draft EIS and should be postmarked by September 15, 1992. Written comments postmarked after that date will be considered to the degree practicable.

DOE will also hold a public scoping meeting in which agencies, organizations, and the general public are invited to present oral comments or suggestions with regard to the range of actions, alternatives, and impacts to be considered in the EIS. The location, date, and time of the scoping meeting are provided in the section of this Notice entitled SCOPING MEETING. Written and oral comments will be given equal weight and will be considered in determining the scope of the draft EIS. When the draft EIS is completed, its availability will be announced in the **Federal Register**, and public comments

will again be solicited. Comments on the draft EIS will be considered in preparing the final EIS. Requests for copies of the draft and/or final EIS, or questions concerning the project, should be sent to Dr. Suellen A. Van Ooteghem at the address noted below.

ADDRESSES: Written comments or suggestions on the scope of the EIS, requests to speak at the scoping meeting, or questions concerning the project, should be directed to: Dr. Suellen A. Van Ooteghem, Environmental Project Manager, U.S. Department of Energy, Morgantown Energy Technology Center (METC), P.O. Box 880, Morgantown, West Virginia 26507–0880, Telephone: (304) 284–5443.

Envelopes should be labeled "Scoping for the York EIS."

FOR FURTHER INFORMATION: For general information on the EIS process, please contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Oversight (EH–25), U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, Tel. (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION:

Background and Need for the Proposed Action

Under terms of Public Law No. 99–190, Congress provided approximately $400 million to DOE to support the construction and operation of demonstration facilities selected for cost-shared financial assistance as part of DOE's Clean Coal Technology (CCT) Demonstration Program. The CCT projects cover a broad spectrum of technologies having the following in common: (1) All are intended to increase the use of coal in an environmentally acceptable manner, and (2) all are ready to be proven at the demonstration scale.

On February 17, 1986, DOE issued Program Opportunity Notice (PON) Number DEPSO1–86FE60966 for Round I of the CCT program, soliciting proposals to conduct cost shared projects meeting the above criteria. In response to the solicitation, 51 proposals were received. From these proposals, 9 projects were selected by DOE for negotiation in July 1986. As originally envisioned, this project would have repowered one of the City of Tallahassee's municipally-owned natural gas boilers with advanced circulating fluidized bed combustion "clean coal technology." DOE determined that an EIS would need to be prepared for the project, and published a **Federal Register** Notice of Intent on October 15, 1990 (55 FR 41747). A public scoping meeting was held in the City of Tallahassee on October 30, 1990, and public comments were received. However, in the fall of 1991, the City chose to not move forward with the project based upon economic conditions specific to the proposed repowering. Accordingly, preparation of the EIS was cancelled, and other potential hosts for the project were considered. The City of Tallahassee indicated its willingness to cooperate with the effort to relocate the project.

Subsequently, DOE agreed to reassign the project to York County Energy Partners, LP. (YCEP), a subsidiary of Air Products and Chemicals Inc. of Allentown, Pennsylvania. The new sponsors would relocate the proposed project from Tallahassee, Florida, to an industrial site in York County, Pennsylvania, where it would operate as a cogeneration facility. All other major aspects of the project, including the technology, the technology supplier (Foster-Wheeler Energy Corporation), the 250 megawatt plant size, and the federal contribution of nearly $75 million would remain unchanged from the original project.

YCEP has requested financial assistance from DOE for the design, construction and operation of the 250–MWe (2, 000 tons of eastern coal per day) single-train circulating fluidized-bed (CFB) facility. This project would use coal from eastern United States mines and have as the project objective the large scale demonstration of CFB technology. The proposed site for this "grass roots" independent power plant project is in West Manchester Township, York County, southeastern Pennsylvania. The proposed project would be located on a 47-acre site currently owned by the J.E. Baker Company, adjacent to their quarry and brick manufacturing operations. The Baker Company would sell the site to Air Products and Chemicals Inc., and enter into a contract for the purchase of the steam produced by the proposed cogeneration facility for use in their brick manufacturing operation. This proposed site, which is zoned for General Industrial use, is currently being used for agricultural purposes.

As noted in the section of this notice entitled Identification of Environmental Issues, DOE will evaluate cumulative impacts within the EIS for all important issues in the vicinity of the sites. Cost, environmental, and technical data from the project would be developed for use by the utility industry in evaluating this technology as a commercially viable power generation alternative. After the anticipated 24-month demonstration period of operation is concluded, YCEP plans to operate the facility on a commercial basis.

Proposed Action

The proposed Federal action is for DOE to provide cost-shared financial assistance to YCEP for the design, construction, and operation of a 250–MWe (2,000 tons of eastern coal per day) single-train CFB facility, known as York County Energy Partners cogeneration facility, to be located adjacent to the J.E. Baker Company quarry and brick manufacturing operations in York County, Pennsylvania. The objective of the proposed project would be to demonstrate large scale (250–MWe) single boiler CFB cogeneration technology, while incorporating a pollution control train for reducing emissions of nitrogen oxides, and a baghouse for reducing emissions of particulates.

The total cost of the proposed project, including the demonstration period, is projected to be over $370 million, with DOE's share being less than 20% percent, or nearly $75 million. The project would last approximately 97 months, including design, construction, and demonstration. If the outcome of the NEPA review process is favorable, construction currently is projected to start about December 1993. Operation of the project during the anticipated 24-month demonstration period would provide the information and experience needed to successfully demonstrate CFB technology as a preferable new alternative to conventional coal-fired power plant technologies. Once DOE's involvement is completed, YCEP would continue to operate the facility on a commercial basis.

The proposed York County Energy Partners cogeneration would be located on a 47-acre site in West Manchester Township. The triangular site is bounded to the south by an active Yorkrail, Inc., railroad line, along its eastern edge by Emigs Mill Road, and along it western boundary by the Briarwood Golf Course. The proposed site is vacant and currently used for agricultural purposes. Topography of the proposed site is generally flat, with elevations gradually increasing to the northwest. Substantial landscaping and berming would be incorporated into the facility design to enhance the appearance of the completed facility. The area is zoned for General Industrial uses, and the proposed use is consistent with community plans for the area, although various land use approvals would be required from West Manchester Township.

The proposed site currently is owned by The J.E. Baker Company; however,

YCEP would exercise its option to purchase the site prior to construction. The proposed facility would include the following major subsystems and key components:

- Turbine Building
- Switch Yard,
- Water Treatment Building,
- Boiler Room Building,
- Enclosed Coal Storage Area and Coal Unloading Building,
- Raw Water and Condensate Tanks,
- Limestone and Ash Storage Silos,
- Cooling Tower, and
- Bag House and Stack.

The proposed project would require an electric interconnection system. Several alternative interconnection arrangements are currently being evaluated by York County Energy Partners and the Metropolitan Edison Company.

Alternatives

Under its authority pursuant to Public Law No. 99–190, DOE is presented with only two alternatives: (1) To cooperatively fund the proposed project; or (2) to decline to fund it (the "no action" alternative). In the latter case, the project would not contribute to the objective of the CCT program, which is to make available to the U.S. energy marketplace a number of advanced, more efficient, economically feasible, and environmentally acceptable, coal technologies. The facility probably would not be constructed and operated; therefore, neither potential environmental impacts related facility construction and operation, nor potential environmental benefits resulting from commercialization of the technology, would occur.

DOE acknowledges its obligation to examine reasonable alternatives which are beyond its immediate authority to implement, but which could also meet the objectives of the CCT Program. DOE is requesting public comment on reasonable alternatives to the proposed York County Cogeneration Facility CFB Demonstration Project.

A Final Programmatic Environmental Impact Statement (PEIS) for the CCT Program was issued by DOE in November 1989 (DOE/EIS–0146). Two alternatives were evaluated in the PEIS: (1) The "no action" alternative, which assumed that the CCT Program was not continued and that conventional coal-fired technologies with flue gas desulfurization and oxides of nitrogen controls to meet New Source Performance Standards would continue to be used; and (2) the proposed action, which assumed that CCT projects were selected and funded, and that successfully demonstrated technologies would undergo widespread commercialization by the year 2010.

Identification of Environmental Issues

The following issues associated with the construction and operation of the proposed York County Energy Partners cogeneration facility will be considered in detail by DOE during its evaluation. This list is neither intended to be all inclusive, nor is it a predetermination of potential impacts. Additions to or deletions from this list may occur as a result of the scoping process.

(1) Air Quality: The effects of air emissions within the region surrounding the site.

(2) Water Resources and Water Quality: The qualitative and quantitative effects on water resources and other water users in the region.

(3) Wetlands: Wetlands potentially impacted by potential wastewater discharges. No wetlands have been identified on-site.

(4) Socioeconomics: Potential bearing on communities that might be affected by the project, as well as consumer costs associated with this project.

(5) Land Use: The potential consequences to land, utilities, transportation routes, and traffic patterns resulting from the project as well as issues related to prime farmlands.

(6) Solid Waste: The environmental effects of generation, treatment, transport storage, and disposal of solid wastes.

(7) Biological Resources: Potential disturbance or destruction of species, including the potential effects on threatened or endangered species of flora and fauna. However, neither threatened nor endangered species have been identified thus far to be associated with the proposed project area. DOE will consult with the U.S. Fish and Wildlife Service of the U.S. Department of the Interior regarding potentially threatened or endangered species.

(8) Cultural Resources: Potential effects on historical, archaeological, scientific, or culturally important sites.

(9) Cumulative Impacts: NEPA requires that the EIS evaluate the impact on the environment that results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions, regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time. Cumulative impacts will be evaluated within the EIS for all important issues in the vicinity of the site.

Issues that are significant will be addressed in detail; issues that are not considered significant will be discussed in less detail, or as appropriate to clarify and distinguish impacts among alternatives.

NEPA and the Scoping Process

DOE will comply with the NEPA process as outlined in the Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (40 CFR parts 1500–1508) and DOE regulations for compliance with the NEPA (57 FR 15122, April 24, 1992).

Scoping, which is an integral part of the NEPA process, is a procedure that solicits public input to the EIS process to ensure that: (1) Issues are identified early and properly studied; (2) issues of little significance do not consume time and effort; (3) the draft EIS is thorough and balanced; and (4) delays occasioned by an inadequate draft EIS are avoided (40 CFR 1501.7). DOE NEPA regulations require that the scoping process commence as soon as practicable after a decision has been reached to prepare an EIS in order to provide an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a propose action. The scope of issues to be addressed in a Draft EIS will be determined, in part, from written comments submitted by mail, and comments presented orally or in writing at a public scoping meeting (see below). The results of the scoping process will be incorporated into a document called an Implementation Plan (IP), which provides guidance for the preparation of the EIS.

The above preliminary identification of reasonable alternatives and environmental issues is not meant to be exhaustive or final. DOE identified the reasonable alternatives and potential environmental issues shown above based on its experience with similar concerns that have been raised for other comparable DOE projects. DOE considers the scoping process to be open and dynamic in the scene that alternatives other than those given above may warrant examination, and new matters may be identified for potential evaluation. The scoping process will involve all interested agencies (Federal, State, County, and local), groups, and individual members of the public. Interested parties are invited to participate in the scoping process by providing comments on both the alternatives and the issues to be addressed in the EIS. DOE will consider all comments in preparing the IP, which

will specify the reasonable alternatives, identify the significant environmental issues to be analyzed in depth, and eliminate from detailed study those alternatives and environmental issues that are not significant or pertinent. When complete, the IP will be available for public review at the locations identified below.

Scoping Meeting

A public scoping meeting will be held at the location, on the date, and at the time indicated below. This scoping meeting will be informal, with a presiding officer designated by DOE who will establish procedures governing the conduct of the meeting. The meeting will not be conducted as an evidentiary hearing, and those who choose to make statements may not be cross-examined by other speakers. To ensure that everyone who wishes to speak has a chance to do so, five minutes will be allotted to each speaker. Depending on the number of persons requesting to be heard, DOE may allow longer times for representatives of organizations. Persons wishing to speak on behalf of an organization should identify that organization in their request to speak. Persons who have not submitted a request to speak in advance may register to speak at the scoping meeting. They will be called on to present their comments as time permits. Oral and written comments will be given equal weight by DOE. Written comments may also be submitted after the scoping meeting, but should be postmarked by September 15, 1992, and forwarded to Dr. Suellen A. Van Ooteghem, Environmental Project Manager, Morgantown Energy Technology Center, as provided in the **ADDRESS** section of this Notice. Written comments postmarked after that date will be considered to the degree practicable.

The meeting is scheduled as follows:

Date: Wednesday, August 26, 1992.
Time: 7 p.m. (Registration opens at 6 p.m.)
Place: West York Area Senior High School Auditorium, 1800 Bannister Street, York, Pennsylvania 17404, (717) 845–6634.

Complete transcripts of the public scoping meeting will be retained by DOE and made available for inspection during business hours, Monday through Friday, at the Department of Energy Freedom of Information Reading Room, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, and at the Department of Energy, Morgantown Energy Technology Center, 3610 Collins Ferry Road, Morgantown, West Virginia 26505. Additional copies of the public scoping meeting transcript will also be made available during normal business hours at the following locations:

1. West Manchester Township Municipal Building, 2501 Catherine Street, York, Pennsylvania 17404, (717) 792–3505.
2. York County Library, 118 Pleasant Acres Road, York, Pennsylvania 17401, (717) 757–9685.
3. York County Court House, 28 E. Market Street, York, Pennsylvania 17401, (717) 771–9675.

In addition, copies of the public scoping meeting transcript will be made available for purchase. Those interested parties who do not wish to submit comments or suggestions at this time, but who would like to receive a copy of the Draft EIS when it is prepared, should notify Dr. Suellen A. Van Ooteghem, Environmental Project Manager, Morgantown Energy Technology Center, at the address given in the **ADDRESS** section of this Notice.

Signed in Washington, DC, this 6th day of August 1992, for the United States Department of Energy.

Paul L. Ziemer,

Assistant Secretary, Environment, Safety and Health.

[FR Doc. 92–19083 Filed 8–10–92; 8:45 am]
BILLING CODE 6450–01–M

Office of Fossil Energy

[FR Docket No. 92–48–NG]

Direct Energy Marketing Limited; Application To Transfer Natural Gas Import Authorization

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application to transfer authorization.

SUMMARY: The Office of Fossil Energy of the Department of Energy (DOE) gives notice of receipt on April 3, 1992, of an application filed by Direct Energy Marketing Limited (DEML) requesting the transfer of its blanket authorization to import natural gas from Canada, 1 ERA ¶ 70,681 (DOE/ERA Opinion and Order No. 158), be transferred to DEML's new U.S. subsidiary, Direct Energy Marketing Inc. (DEMI).

DATES: Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, August 26, 1992.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION:

Larine A. Moore, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–094, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478.
Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: DEMI, a Delaware corporation with its principal place of business in Calgary, Alberta, Canada, is wholly owned and controlled by DEML. Order 158 authorized DEML to import up to 200 Bcf of natural gas from Canada over a two-year term that, according to the application, commenced February 1, 1992. Import volumes under the proposed transfer of authority would remain the same as currently authorized and the specific terms of each import arrangement would continue to be determined by competitive factors in the markets served.

The application for import authority will be reviewed pursuant to Section 3 of the National Gas Act and the authority contained in DOE Delegation Order Nos. 0204–111 and 0204–127. Since the only change in the existing authorization is the proposed transfer of the import authority to DEMI, DOE believes that the sole relevant issue in this case is the impact of the transfer on DEMI's customers. The competitiveness of the import arrangements, need for the imports, and security of the gas supply are not expected to be issues in this proceeding. Consequently, we are establishing a shortened comment period of 15 days. Parties, that may oppose this application, bear the burden of overcoming a presumption the requested transfer is not inconsistent with the public interest.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedure

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable,

and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590.

Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should filed with the Office of Fuels Programs at the address listed above. It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trail-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedures is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of DEMI's application is available for inspection and copying in the Office of Fuels Programs Docket Room, Room 3F–056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on August 5, 1992.

Charles Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–19081 Filed 8–10–92; 8:45 am]

BILLING CODE 6450–01–M#

[FE Docket No. 92–59–NG]

IGI Resources, Inc.; Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting IGI Resources, Inc. (IGI) blanket authorization to import up to 200 Bcf of natural gas from Canada over a two-year term, beginning on the date of first delivery after July 31, 1992, the date which IGI's current blanket authorization expires.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC August 5, 1992

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–19082 Filed 8–10–92; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 92–34–NG]

Long Island Lighting Co.; Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Long Island Lighting Company blanket authorization to import up to 25 Bcf of natural gas from Canada over a two-year term beginning on the date of the first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, August 5, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–19084 Filed 8–10–92; 8:45 am]

BILLING CODE 6450–01–M

Alaska Power Administration

Snettisham Power Marketing Plan

AGENCY: Alaska Power Administration, Department of Energy.

ACTION: Notice.

SUMMARY: Alaska Power Administration (APA) is publishing its Draft Marketing Plan—Snettisham Project to start the process to establish new allocations of power and long-term power sales contracts for the Snettisham Project. The new contracts will replace contracts which have been in place since 1973 and which expire at the end of December 1993. APA is publishing the draft plan to provide an opportunity for public review and comment. The Marketing Plan and the new contracts are fully compatible with the Department of Energy legislative proposal on APA divestiture which was submitted to Congress in June 1992.

DATES: Written comments must be submitted on or before September 10, 1992.

A public information and comment forum will be held August 20, 1992, at 7 p.m., at the office of Alaska Power Administration, 2770 Sherwood Lane #2B, Juneau, Alaska.

ADDRESSES: Written comments should be submitted to: Mr. Robert Cross, Alaska Power Administration, 2770 Sherwood Lane #2B, Juneau, AK 99801.

FOR FURTHER INFORMATION CONTACT: Mr. Scott Willis, Alaska Power Administration, 2770 Sherwood Lane #2B, Juneau, AK 99801, (907) 586–7405.

SUPPLEMENTARY INFORMATION:

Draft Marketing Plan—Snettisham Project.

A. General

APA is starting the process to establish new allocations of power and long-term power sales contracts for the Snettisham Project. The new contracts will replace contract which have been in place since 1973 and which expire at the end of December, 1993.

The Snettisham Project authorization (Section 204 of the 1962 Flood Control Act) establishes the general criteria for marketing project power and energy. The marketing plan will describe APA's implementation policies for these legislated marketing criteria.

APA also plans an Environmental Assessment on the marketing plan and allocations to be finalized before new contracts are agreed to. The Environmental Assessment will meet requirements of the Department of Energy's NEPA guidelines.

Presently, APA sells a small amount of power to the State of Alaska Department of Fish and Game (ADF&G) for its Snettisham Hatchery. These power sales are under a long-term agreement between APA and ADF&G. This plan and subsequent allocations will not alter availability of power for sale to ADF&G.

B. Background

APA markets power and energy from the Snettisham Project. The Long Lake and Crater Lake divisions of the Snettisham Project were authorized by Congress in 1962. Construction of the Long Lake phase began in 1967 and was completed in 1973. The original power sales contracts signed at that time had 20-year terms and expire at the end of 1993. The Juneau area had a surplus of hydroelectric energy until 1985 when area loads exceeded the hydro resource. Construction of the Crater Lake phase of the project began in 1984 with commercial power production beginning in 1991. With the completion of the Crater Lake phase, the Juneau area once again has a surplus of hydroelectric energy.

The Juneau area is electrically isolated and retail customers are served by a single utility, Alaska Electric Light and Power (AELP). About 80% of the area energy requirement comes from purchase of Snettisham energy with the remaining 20% provided by AELP's own generation. While AELP is the only utility customer purchasing Snettisham energy, APA also markets a small amount of energy to the State of Alaska for operation of a fish hatchery at Snettisham.

Studies have been made in the past of the feasibility of interconnecting the various load and generation centers in Southeast Alaska with themselves and ultimately with Canada to the north and south. These interties are technically feasible, but significant portions have not yet proven to be economically feasible.

An important consideration in the Juneau area electrical power market is the potential for the addition of relatively large industrial loads. A number of mining projects are in various stages of development in the Juneau area. The Green's Creek mine began operation in 1988 on Admiralty Island, and studies are currently proposed to determine the feasibility of connecting this project to the area power grid. Echo Bay Exploration is pursuing permits for development of two large mining projects in the area, one of which, the A–J mine, is located only four miles from downtown Juneau. Other mining projects are also being proposed which could conceivably be linked to the Juneau electrical system. The energy requirements for these potential mining loads would greatly exceed the present hydroelectric surplus.

In 1986, the Federal government formally proposed the sale of the Snettisham Project. A purchase agreement for Snettisham was negotiated and signed with the State of Alaska in 1989. The divestiture of this Federal project is awaiting Congressional approval.

The Marketing Plan and the subsequent power sales contracts will be compatible with the divestiture proposal. Under terms of the Snettisham Purchase Agreement, the new owners will take over APA's rights and obligations under the new power sales contracts when they acquire ownership of the project.

C. Objectives

The objectives of this plan are to establish the criteria and process for allocating power from APA's Snettisham project in accordance with provisions set forth in the Snettisham Project authorizing legislation, Such provisions include instructions to market power so as to (1) Encourage the most widespread use; (2) do so at lowest possible rates to consumers consistent with sound business principles: and (3) give preference to Federal agencies, public bodies, and cooperatives. An additional objective of this plan is to facilitate implementation of the divestiture if and when Congress approves the measure.

D. Process

The Steps APA intends to follow in this process are:

1. Publish the draft marketing plan and accept comments during a 30-day period.

2. Hold a public information and comment forum during the comment period.

3. Consider the comments received, modify the plan as appropriate, and finalize and publish the marketing plan.

4. Invite requests for allocations of Snettisham power and energy in accordance with the plan.

5. Complete an Environmental Assessment of this action as required by Department of Energy NEPA guidelines.

6. Allocate power and energy in accordance with the plan.

7. Sign long-term power sales contracts with customers receiving allocations.

E. Marketable Resources

The entire output of Snettisham Project power and energy is available for allocation, less government camp loads, losses, and service to ADF&G. The energy production and generation capacity available for allocation is:

Firm energy	275 gWh
Secondary energy	50 gWh
Capacity	72 mW

Firm energy is the energy available from the project in approximately 9 out of 10 years. In most years energy will be available over and above the firm amount. This energy is secondary or surplus energy. On the average, APA expects to have 50 gwh of secondary energy available, though in some years there will be more and in some years there will be less. In unusually dry years there will be no secondary energy at all.

APA proposes to offer allocations of firm energy, secondary energy, and capacity, but will consider proposals for other classes of service.

APA offers no commitment which would require APA to purchase energy or capacity.

F. Market Area and Allocation policies

The market area for power from the Snettisham Project is the Juneau area, i.e. the AELP service area. Proposals have been advanced for interconnecting other communities in Southeast Alaska or large mining loads with the Juneau market area. The following section describes APA policy for allocating Snettisham power and energy in these circumstances.

1. Policy for Possible Service to Additional Southeast Alaska Communities

Power and energy in excess of the needs of the Juneau market area will be available for export to other communities. No power will be allocated for such exports absent firm plans to finance and build the necessary transmission facilities.

2. Policy for Preference in Sale of Power to Public Bodies and Cooperatives

In allocating power surplus to Juneau's needs, APA will give

preference to public bodies and cooperatives who conduct utility-type operations.

3. Policy for Possible Service to Existing and Proposed Mining Developments in the Juneau Vicinity

Power and energy in excess of the needs of the Juneau market area will be considered available to serve major industrial customers. APA prefers to serve such customers through AELP rather than as direct service customers of APA.

APA encourages such customers to work directly with AELP so that AELP's request for allocation of Snettisham power and energy will reflect their needs. APA will consider requests for allocations from major industrial customers only if it is demonstrated that service through the utility is infeasible.

4. Policy To Allocate Power in the Event That Requests for Allocation Exceed the Supply

The mining developments, most notably the proposed A–J development and Green's Creek, including its expansion could easily result in requests substantially exceeding the available supply. In that case, there will need to be determinations as to what part of and which of the proposed mining loads would receive Snettisham power and energy.

APA intends that such determinations be made as a part of the AELP process for deciding AELP's allocation request, that the determinations fully consider impacts to other classes of AELP customers, and that AELP's request for allocations demonstrate that proposed AELP service to one or more mining developments works to the benefit of other classes of AELP customers.

5. Policy To Allocate Power in the Event the Available Supply Exceeds Requests for Allocation of the Resource

If there is additional firm energy/capacity remaining after the initial allocations, APA will offer firms surplus energy for allocation in accordance with the marketing plan. If firm surplus energy is available, it will probably be in declining amount over time.

G. Integrated Resource Plans

Requests for allocations must be accompanied by a statement outlining the requestor's intended activities under Integrated Resource Planning (IRP) or an equivalent process. A requirement for developing and updating IRP or equivalent plans will be incorporated into the long-term power sales contracts. IRP or an equivalent process is one which gives equal consideration to supply and demand side alternatives and methods of funding the appropriate investments to assure high levels of efficiency in all energy uses.

H. Contract Arrangements

Entities receiving an allocation of Snettisham resources will be offered an electric service contract for the allocated resource based on this plan. Contracts will be for a period of up to twenty years and will include "take or pay" provisions of other arrangements subject to the integrity of the project and availability of the resource.

Delivery points will be on the Snettisham transmission system. Normal delivery will be made at Snettisham transmission voltages. Deliveries may continue to be made at subtransmission voltages at powerplant, substation, and

I. Reallocations

Resources made available for marketing because an allocation has been reduced or withdrawn may be administratively reallocated by APA's Administrator without further public process.

Issued at Juneau, Alaska, August 5, 1992.

Robert J. Cross,

Administrator.

[FR Doc. 92–1908 Filed 8–10 –92; 8:45 am]

BILLING CODE 6450-01-M1

Bonneville Power Administration

Final Environmental Impact Statement; 1992 Columbia River Salmon Flow Measures Options Analysis

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Record of Decision (ROD) on the Final Environmental Impact Statement (EIS) 1992 Columbia River Salmon Flow Measures Options Analysis (1992 Flow Options EIS).

SUMMARY: BPA has decided to implement a proposed action in 1992 as part of an ongoing effort to improve the survival of anadromous fish stocks, especially weak stocks, including the Pacific salmon that National Marine Fisheries Service (NMFS) has listed as endangered or threatened (Snake River sockeye salmon and spring/summer and fall chinook salmon). BPA will store up to 3.0 Million Acre Feet (MAF) of water, above the existing Water Budget of 3.45 MAF, in Grand Coulee and Arrow reservoirs to augment flows in the lower Columbia River during May and June 1992. In addition, BPA will acquire, if necessary, the power lost through this action and the actions to be taken by the U.S. Army Corps of Engineers (Corps) and the Bureau of Reclamation (BR) in 1992 at Snake River system projects and at John Day project to benefit salmon. BPA also will implement those actions in 1992 that the NMFS recommended BPA, BR, and The Corps take to improve survival of Snake River sockeye, spring/summer chinook, and fall chinook salmon.

The proposed action, including actions aimed at improving survival of salmon and steelhead, e.g., improved bypass facilities, improved transportation, expanded predator control, increased law enforcement, water diversion screening, spill, and a captive rearing program for Snake River sockeye salmon, is aimed at improving survival of salmon and steelhead in the Columbia River Basin. Some of the actions also evaluate or test ways to improve survival of listed salmon stocks. After consideration of the best available scientific evidence, BPA concludes that the proposed action is not likely to jeopardize the continued existence of Snake River sockeye or chinook salmon. The proposed action is also the environmentally preferred alternative. This ROD is based on the results of evaluations addressed in the draft and final 1992 Flow Options EIS, public meetings held after the issuance of the draft and final EIS, consideration of all public and regulatory agency comments received on the draft and final EIS, BPA's Biological Assessment and Supplement to the Biological Assessment, and consultation with NMFS and the U.S. Fish and Wildlife Service (FWS) as required by the Endangered Species Act (ESA) of 1973, as amended.

The 1992 Flow Options EIS was a cooperative effort of BPA, BR, and the Corps. The Corps was the lead agency. The 1992 Flow Options EIS has been adopted by the U.S. Department of Energy (DOE) (Memorandum dated February 10, 1992, from Paul L. Ziemer to Randy W. Hardy) as the National Environmental Policy Act (NEPA) of 1969 compliance document addressing storage and power acquisition actions that BPA will implement in 1992. The 1992 Flow Options EIS addressed the effects of implementing a No-Action Alternative and three action alternatives (each containing a number of different options) to improve in-river migration conditions (flows and temperature) for juvenile and adult salmon in the lower Snake and lower Columbia Rivers in 1992. The scope of the 1992 Flow Options EIS was limited to flow improvement measures that could be implemented in 1992. Measures

requiring major structural modifications at exiting projects were not evaluated because they could not be completed in time to benefit salmon passing through the system in 1992. In accordance with this decision, the 1992 plan of reservoir regulation and project operations is summarized as follows:

I. Crops Actions

Operate the four lower Snake River projects near minimum operating pool (MOP) from April 1 to July 31, 1992;

Operate John Day project near elevation 262.5 feet from May 1 to August 31, 1992, unless higher pool levels are required to avoid impacts to irrigation intake facilities on the reservoir;

Augment lower Snake River flows with release of 900 Thousand Acre Feet (KAF) or more from Dworshak reservoir between April 15 and June 15, 1992. This water is in addition to any minimum flow release at Dworshak. In addition, 200 KAF will be released from Dworshak in September 1992 to assist migration of adult salmon;

Conduct field studies of a drawdown of Lower Granite and Little Goose pools to elevations below MOP in March 1992, and of the effects of real time water shaping between April 15 and August 30; and

Operate the lower Snake and Columbia River projects as described in the annual Fish Passage Plan and the Project Improvements for the ESA.

II. BPA Actions

Augment lower Columbia River flows at The Dalles for the months of May and June with Water Budget releases and releases from Arrow and Grand Coulee reservoirs of up to 3.0 MAF, as determined by the April 1 final volume-of-runoff forecast;

Request, and the Corps will implement, continued spill in 1992 at Lower Monumental and Ice Harbor beyond that described in the Fish Spill Memorandum of Agreement (MOA). These spills will be continued in the spring during fish guidance testing. The summer spills, to assist adult migration, will be based on the assumption that the 1992 migration will be similar to that observed in 1991. At John Day, The Dalles, and Bonneville Dams, spill will continue as specified in the MOA and in the Corps' Fish Passage Plan.

BPA will purchase power or forego nonfirm sales, on an as needed basis, to replace the power lost through water storage, flow augmentation or spill for fish.

III. BPA, BR, and Corps Action

BPA and BR will seek to acquire up to 400 KAF of water from the upper Snake River Basin for release between June 16 and August 30, 1992. The difference between water that is available and the target 400 KAF will be made up by releases from Dworshak. Thus, the contribution to flows from the upper Snake River or Dworshak can vary from 0 to 400 KAF depending on water availability in the upper Snake River Basin.

FOR FURTHER INFORMATION CONTACT: John Rowan, Chief, Environmental Compliance Section, PGA, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208; Telephone (503) 230–4238. For copies of the 1992 Flow Options EIS, you may contact BPA's document request line: toll-free 800–622–4520, or BPA's Public Involvement office in Portland. Telephone numbers, voice/TTY, for BPA's Public Involvement office are: 503–230–3478 in Portland; and toll-free 800–622–4519 nationwide.

For general information on NEPA process contact: Carol M. Borgstrom, Director, Office of NEPA Oversight (EH–25), U.S. Department of Energy. 1000 Indpendence Avenue, SW., Washington, DC 20585, (202) 586–4600 or (800) 472–2756.

Information may also be obtained from:

Mr. George E. Bell, Lower Columbia Area Manager, Suite 243, 1500 NE. Irving Street, Portland, Oregon 97232, 503–230–4551.

Mr. Robert N. Laffel, Eugene District Manager, room 206, 211 East Seventh Avenue, Eugene, Oregon 97401, 503–465–6952.

Mr. Wayne R. Lee, Upper Columbia Area Manager, room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509–353–2518.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406–329–3060.

Mr. Ronald K Rodewald, Wenatchee District Manager, P.O. Box 741, room 307, 301 Yakima Street, Wenatchee, Washington 98801, 509–662–4377, extension 379.

Mr. Terence G. Esvelt, Puget Sound Area Manager, P.O. Box C19030, Suite 400, 201 Queen Anne Avenue North, Seattle, Washington 91809–1030, 206–553–4130.

Mr. Thomas V. Wagenhoffer, Snake River Area Manager, 101 West Poplar, Walla Walla, Washington 99362, 509–522–6225.

Ms. Ruth Bennett, Acting Idaho Falls District Manager, 1527 Hollipark Drive, Idaho Falls, Idaho 83401, 208–523–2706.

Mr. James R. Normandeau, Boise District Manager, Room 450, 304 N. 8th Street, Boise, Idaho 83702, 208–334–9137.

SUPPLEMENTARY INFORMATION:

I. Decision

BPA has decided to implement a proposed action in 1992 that improves the survival of weak anadromous fish stocks including Snake River sockeye and chinook salmon. BPA will increase the amount of water stored in Arrow Reservoir in British Columbia, Canada and in Grand Coulee Reservoir, in Washington State, in order to augment flows in the lower Columbia River in May and June 1992 for the benefit of Snake River salmon. The amount of additional water to be stored varies from 0 to 3 MAF as determined by the adjusted April forecast of the January through July runoff. Since this water is in addition to an existing 3.45 MAF of Water Budget, the total amount of water that could be available for flow augmentation for fish in the lower Columbia in May and June of 1992, would be 6.45 MAF.

In addition, BPA has decided to continue the Spill Agreement for Lower Monumental, Ice Harbor, John Day, The Dalles, and Bonneville Dams in 1992, and work with BR to attempt to acquire up to 400 KAF of water from the upper Snake River Basin to augment flows between June 16 and August 30, 1992. BPA will also support the actions being taken by BR and the Corps to benefit fish in the lower Snake and lower Columbia Rivers in 1992.

Finally, BPA has decided to acquire an equivalent amount of power in 1992 from alternative sources to replace, on an as needed basis, that which would have been generated if the additional water to be stored in Arrow, Grand Coulee, and Dworshak had been available for optimal power production. BPA has also decided to acquire an equivalent amount of power in 1992 to replace, on an as needed basis, the power lost due to drawdown of John Day Reservoir and the lower Snake River projects, and spill at Lower Monumental and Ice Harbor.

Nothing in this decision forecloses modifications of the manner in which water is managed should the region experience emergency conditions or if changed conditions warrant an operational modification. Nothing in this decision prescribes the manner in which non-Federal projects in the United States are to be operated. To the extent practicable, this decision only affects the operation of Arrow, Grand Coulee, and Dworshak storage reservoirs and the eight Federal run-of-river dams and reservoirs downstream of Lewiston, Idaho. Any water acquired form projects in the upper Snake River Basin will be acquired on a willing seller willing buyer basis and its management determined by specific agreement.

II. Background

The Shoshone-Bannock Indian Tribes of Idaho petitioned NMFS on April 2, 1990, to list the Snake River sockeye salmon as a endangered species under the ESA. A group of conservation organizations filed separate petitions on June 7, 1990, to list the Snake river spring, summer, and fall chinook salmon and lower Columbia coho salmon as threatened under the ESA. In response, Senator Mark Hatfield of Oregon convened a regional assembly of organizations and interests concerned with the plight of the Snake-Columbia River salmon. These interests included public agencies responsible for water management, power production and marketing, and fisheries management; representatives of affected states, and potentially affected economic interests and members of the public concerned with conservation of Pacific Northwest salmon. This assembly known as the "Salmon Summit" held its first formal meeting on June 30, 1990. The mission of the Salmon Summit was to produce a salmon management plan in response to petitions to list the five salmon stocks under ESA. This plan was to include actions related to salmon harvest, production, habitat and water management.

Although the Salmon Summit reached no consensus on a long-term plan of action, it did agree on an action plan for 1991 that could be implemented under existing authorities. That plan called for increasing the Water Budget for 1991, drawing down certain reservoirs in the lower Snake River and lower Columbia River, and extending the time the Corps operates its program to transport juvenile salmon downstream by barge and truck. In addition, the Salmon Summit requested the corps "undertake the process necessary to design a study for Snake River reservoir drawdown during operational year 1992 that would improve the passage of migrants (juveniles) without impeding the upstream migration (adults)." Subsequent agency discussions expanded the original request to include all practical water management measures to improve salmon passage.

NMFS proposed on April 5, 1991, that the Snake River sockeye salmon be listed as an endangered species under ESA. NMFS announced on June 7, 1991, the proposed listing of Snake River spring/summer and fall chinook as threatened species (56 FR 29542; 56 FR 29547). NMFS declared on November 20, 1991, the Snake River Sockeye salmon endangered, effective December 20, 1991 (56 FR 58619). On April 22, 1992, NMFS decided to list Snake River Spring/summer chinook and fall chinook salmon as threatened species (57 FR 14653).

The listings create additional responsibilities for all persons whose actions affect these fish. Federal agencies must avoid jeopardy to and support recovery of these species. To enable recovery, NMFS is developing a recover plan. All persons must also avoid unlawful takings of these fish. A "taking" includes actions that harass or harm the fish.

Snake River sockeye and chinook salmon are born in fresh water, migrate as smolts down the Snake and Columbia rivers to the Pacific Ocean, and later return to their places of birth to spawn. During this life-cycle, these fish encounter a multiplicity of harmful conditions resulting from human activity.

Improvement of these conditions requires a comprehensive solution addressing all stages of the species' life-cycles. An effective approach toward avoiding jeopardy and achieving recovery cannot concentrate upon only one cause or one stage.

Actions that can be changed to improve conditions for fish include those in the following list.

A. Hydroelectric Dams

Forty-eight—including 29 Federal—multipurpose dams were built in the Columbia River Basin beginning in 1912. The multipurpose dams were built to control floods, hold irrigation water, allow navigation and recreation, and produce power.

Some of these dams blocked habitat for the currently listed fish. Idaho Power Company's Hells Canyon Dam blocked chinook salmon historic spawning grounds in the Snake River and its tributaries further upstream. In addition, the Corps Dworshak Dam blocked chinook habitat on the Clearwater River. Before its removal, Sunbeam Dam blocked access by sockeye salmon to Redfish Lake in Idaho.

Dams inhibit juvenile and adult anadromous fish migration. Snake River sockeye and chinook must traverse eight Federal dams as they migrate to the ocean and return to their spawning grounds. In the Snake River, juvenile fish will first pass Lower Granite, and then Little Goose, Lower Monumental, and Ice Harbor dams, after which they enter the Columbia River. In the Columbia River, these juveniles will first pass McNary, and then pass John Day, the Dalles, the Bonneville Dams.

Changes in reservoir operations and structural modification of the dams can improve survival of anadromous fish. However, an effective solution requires more than improvements at dams. A report in the March-April 1991 edition of the American Fisheries Society Journal states that 214 stocks of salmon are in trouble. More than half of these fish live in areas without dams: Coastal streams, the Puget Sound, or the lower Columbia River. Only 76 of the salmon stocks identified by the report have to migrate past Federal hydroelectric dams on the Columbia River.

In addition, NMFS and Idaho Department of Fish and Game Studies show that 40 to 60 percent of Snake River salmon die before they reach the first dam on the Snake River: Lower Granite. In addition, many smolts die after they have passed Bonneville Dam. These facts indicate that many juveniles die due to causes other than the hydroelectric system: Predators, poor water quality, and poor health. Some of the fish transported and released below Bonneville Dam die from unknown causes.

To the extent that additional water is sought for fish, it is also significant to note that the two large storage dams in the Snake River Basin-the Corps' Dworshak Dam and Idaho Power Company's Brownlee Dam—control only 3 million acre-feet of Snake River average annual flow of 35 million acre-feet. In contrast, 16 million acre-feet, or 46 percent of the Snake River's average annual flow, is diverted for irrigation. Of this, 6 million acre feet, or 17 percent of the Snake River's average annual flow, is consumed, and 10 million acre-feet returns to the river at a later time.

B. Land Use

Cattle grazing, real estate developments, logging, farming, road building, and other land uses have destroyed some salmon habitat. A recent U.S. Forest Service study shows that such practices removed 50 to 75 percent of the pool habitat in the Columbia River Basin. Pools are vital to the survival of both adult and young salmon.

C. Pollution

Effluents from cities and industries, along with silt and chemicals from farms, have impaired the quality of the salmon's water.

D. Irrigation

Of the average 35 million acre-feet that flows down the Snake River each year, 16 million acre-feet are diverted for irrigation. Only 10 million acre-feet returns to the river. Six million acre-feet are consumed. In addition, diversion dams, dead-end irrigation canals, low flows and high temperatures have

blocked salmon from parts of some rivers such as Idaho's Lemhi River. In addition, unscreened irrigation diversions are a source of juvenile anadromous fish mortality.

E. Mining

In 1910, miners in Idaho built Sunbean Dam on the Salmon River. The dam blocked sockeye runs. Mining dams, silt, and chemicals leaching from mines have blocked or polluted streams.

F. Hatcheries

In 1991, the Columbia Basin's 51 hatcheries produced an estimated 83 million young salmon. Many biologists worry that the large number of hatchery fish take food and living space away from wild fish. They are also concerned that hatchery fish interbreed with wild fish, thereby diluting the wild fish's genetic characteristics, and spread disease.

G. Harvest

Hatcheries produce 80 percent of the Columbia Basin's annual run of 2.5 million adult salmon. Because harvest levels have been based upon the overall numbers of fish, instead of wild fish, harvest levels have been higher than they should be if wild salmon are to be protected. For example, more than 90,000 sockeye entered the Columbia River's mouth each year between 1980 and 1990. But the Snake River's mouth each year between 1980 and 1990. But the Snake River's part of the run was only approximately 73 fish per year. Some estimates show that as much as 41 percent of the sockeye and 74 percent of the fall chinook have been harvested in recent years. Ocean fishing also consumes a great number of salmon. Some estimates show that about 75 percent of all fish harvested are caught offshore.

BPA has actively worked with regional interests to achieve a comprehensive, biologically based, and coordinated approach toward improving troubled fish runs. For its part, BPA has developed a proposed action for river operations that improves survival of fish during downstream and upstream migration. With respect to the listed species, BPA has engaged in extensive consultation with the NMFS and in extensive analyses of the impact of the operations of hydroelectric projects upon fish and how hydroelectric operations can avoid jeopardy. This analysis included preparation of a biological assessment and participation as a cooperating agency in preparation of the 1992 Flow Options EIS.

BPA's analysis includes projections over the long term: it assesses whether declining populations of the listed species would level off and indeed increased if operations of the type proposed for 1992 were continued into the future. The analysis leads BPA to this record of decision that the proposed action is not likely to jeopardize the Snake River sockeye or chinook salmon.

In addition, the BPA, Corps, and BOR have commenced the System Operation Review, an environmental analysis that is evaluating potential major changes in Columbia River system operations. These include development of a multiple-use operating strategy for the rivers system, and renegotiation and renewal of the Pacific Northwest Coordination Agreement and other agreements related to the Columbia River Treaty between the United States and Canada.

III. Alternatives Considered

Four alternatives were considered in the 1992 Flow Options EIS as ways in which the downstream movement of juvenile salmon could be improved. The "No-Action" Alternative assumed the normal operation of the dams, reservoirs, and fish programs in the Columbia River Basin typical of the years 1985 through 1990.

A number of fish research and management actions are a part of the No-Action Alternative. The Juvenile Fish Transportation Program would continue as the primary method of moving juvenile salmonids downstream during April through mid-September on the lower Columbia River. Mainstream reservoirs would continue to be operated within normal ranges. Migration of juvenile salmon in the mainstream Columbia would be enhanced by releases of up to 3.45 MAF of water in May and June from Grand Coulee reservoir for the benefit of fish (Water Budget). Flow in the lower Snake River during April, May, and June would be augmented by releases from Dworshak and Brownlee (Idaho Power Co.). Water would be spilled at lower Snake and lower Columbia River projects in spring and summer to enhance movement of juveniles over dams instead of through turbines. Juvenile and adult fish passage facilities at all eight run-of-river Federal projects would continue to operate. Monitoring of juvenile and adult migration at Federal projects would continue.

A second alternative method of increasing water velocity, hence, potentially improving the movement of juvenile salmon, was to lower the elevations of the mainstem reservoirs. This action would reduce the cross-sectional area of the reservoir, thereby increasing the velocity of a given amount of water. Five different drawdown options were considered in the 1992 Flow Options EIS for lower Snake and lower Columbia River projects. The drawdown options considered for the lower Snake River projects were: Draft all four projects to minimum operating pool (MOP); draft all four projects to near spillway crest; draft Lower Granite 710 feet elevation and the remaining three projects to MOP. Only two drawdown options were considered for the lower Columbia River project. These were drawing all four lower Columbia River projects down to MOP and drawing McNary and John Day down to 337 and 262.5 feet, respectively, and the Dalles and Bonneville to MOP.

A third alternative for increasing velocity was to augment the amount of water flowing through the system. Flow augmentation would increase water velocity and presumably stimulate more rapid downstream migration. Eleven different flow augmentation options were considered for the Snake River and two different options were considered for the Columbia River. The options for the Snake River projects ranged from a discharge of 600 KAF from Dworshak to unlimited discharge from Dworshak and Brownlee reservoirs.

The two flow augmentation options considered for the Columbia River were similar. They differed in the manner in which water was to be stored and the manner in which water was to be released. These options were defined as the Target 200 option and the Northwest Power Planning Council's Plan. Both options called for the storage of additional water (up to 3 MAF) in Arrow and Grand Coulee Reservoirs for release in May and June. This water is in addition to the existing Water Budget of 3.45 MAF. Target 200 established a target flow. The Council's plan did not. However, the flows under both of these options would, on the average, provide flow at the Dalles during May and June that would vary from about 170 to 270 kcfs. Since the two options would have similar environmental effects, on average, they were treated in the 1992 Flow Options EIS as one option.

The fourth alternative (includes proposed action) considered various combinations of drawdown and flow augmentation. Three different combinations were evaluated. All included Target 200 flow augmentation of the lower Columbia River. The flow augmentation from Dworshak ranged from 600 to 900 KAF. Most included drawdown of the lower Snake River and lower Columbia River projects to near MOP.

The proposed action is the environmentally preferred alternative. It will result in improved conditions for salmon in the Snake and Columbia Rivers. This alternative represents actions whose environmental, social, and economic impacts have been found acceptable by local, State, regional and Tribal governments. It is not likely to jeopardize the continued existence of Snake River sockeye, spring/summer chinook, or fall chinook salmon in 1992.

IV. Decision Factors

The decision to implement the proposed action (including the purchase of power from alternative sources that would be associated with the storage of additional water for flow augmentation, drawdown of run-of-river projects, continued spill at Lower Monumental and Ice Harbor, and the acquisition of additional water from upper Snake River Basin projects), is based on the following factors: Legal, environmental, Section 7 consultation with NMFS, analytic, and economic.

A. Legal Factors

NEPA provides that BPA, prior to deciding to undertake a major Federal action significantly affecting the environment, analyze the potential environmental impacts of the proposed action (43 U.S.C. 4332(a)). BPA participated in the requisite analysis in the 1992 Flow Options EIS. In this ROD, BPA announces its decision after considering associated environmental impacts.

ESA requires that Federal agencies, in consultation with NMFS, and on the basis of the best available scientific evidence, ensure that their actions are not likely to jeopardize endangered or threatened species (16 U.S.C. 1536(a)(2)). Consistent with this provision and with regulations describing the consultation process, BPA prepared a Biological Assessment and engaged in formal consultation with NMFS with regard to Snake River sockeye, spring/summer chinook and fall chinook salmon. See 50 CFR part 402. After the conclusion of consultation and issuance of a biological opinion by NMFS, BPA, as an action agency, must then determine whether its actions are likely to jeopardize these species (50 CFR 402.15(a)). BPA describes its determination in this ROD.

B. Environmental Factors

The 1992 Flow Options EIS focused on those actions that could be implemented in 1992 to improve the migration of juvenile salmon by increasing water velocity in the lower Snake and lower Columbia Rivers during low flow conditions. The evaluation of the proposed action and alternatives in the 1992 Flow Options EIS is part of an ongoing effort to improve the survival of declining stocks of Pacific salmon originating in the Snake River Basin.

The increases in water particle travel time that are associated with construction and operation of the run-of-river projects of the Columbia River Basin have been a source of concern to fishery managers for years. The delays that are associated with low flow years have been of particular concern. Many believe that some improvement in water velocity during low flow conditions will result in a reduction in the time it takes juvenile salmon to migrate past the eight dams and reservoirs in the lower Snake and lower Columbia rivers and, thereby, reduce the time salmon smolts are exposed to predation and other adverse factors and reduce the opportunity for residualism. However, reductions in particle travel time do not necessarily mean reductions in fish migration time. Factors other than flow levels, such as the level of smoltification and water temperatures, also affect travel time. There is disagreement among experts as to the relationships among increased flows, improved travel time, and improved fish survival for juvenile salmon.

The available data are very limited. Additional survival data is needed for salmon and steelhead. To address this need, extensive efforts will be made to collect data and information that will contribute to a long-term plan for the recovery of threatened and endangered Columbia River Basin salmon.

Most regional scientists agree that the limited survival studies on yearling chinook and steelhead show increased smolt survival with increased flow up to approximately 85 to 100 kcfs in the Snake River and 200 to 220 kcfs in the lower Columbia River. There is disagreement among scientists as to whether existing data supports survival benefits for flows above these levels.

For subyearling chinook migrants, the limited studies have been interpreted by different scientists to show: (1) No effect on travel time; (2) some effects on travel time; and (3) some effect only when smolts reach an active migration size. Based on predation studies, models have been developed that assume both a relationship and no relationship between travel time through reservoirs and predation losses. No conclusive studies exist on the relationship between flow and survival for subyearling chinook salmon.

The potential environmental effects that were evaluated in the 1992 Flow Options EIS were: (1) Flow augmentation effects at storage projects associated with a change in storage and release quantities and schedules; (2) the effects at run-of-river projects that would be associated with increased water velocities, increased spill, and reduced pool elevations (drawdown effects in run-of-river projects); and (3) the combined effects of augmentation and drawdown actions.

Potential environmental effects of flow augmentation options at storage projects were determined not to be significant. This is because, in most instances, the proposed storage and release actions were constrained by the operational limits of the affected projects. For example, the flood control and refill objectives that have been established for these projects were met in most options. Only in those cases in which the operational constraints of the storage projects were ignored (e.g., evaluating the effects of unrestricted release to meet some targeted flow) were significant environmental effects predicted.

The principal effect of flow augmentation options on storage projects was how the schedules for filling and drafting were modified during the months of April through June. The constraints to this change were flood control limitations during April through June and the need for the pools to be at or near summer conservation pool elevation by July 31. Unrestricted releases from storage projects would adversely impact resident fish by exposing spawning areas, flushing nutrients out of the pools and entraining resident fish in the discharge. Since unrestricted releases would empty the storage reservoirs, flood areas downstream, and impact refill, these options were eliminated from consideration early in the study process. Augmentation from non-Federal reservoirs in the Snake River Basin was not considered a viable option in the EIS since contributions from these reservoirs would be dependent on complex negotiations that would not be completed in time for the 1992 migration season.

The most significant potential environmental effects would be those associated with measures taken to increase water velocity and flow in the lower Snake and lower Columbia Rivers. Flow augmentation had fewer environmental effects that did reservoir drawdown. This is because any augmentation during low runoff years would result in flows that are less than or equal to the flows observed during years of higher runoff. Thus, potential effects of higher flows due to augmentation would not be much

different from effects of flows during wetter years. Further, the operational limits of discharge from storage projects limit the maximum amount that river flows can be augmented. For example, the maximum discharge from Dworshak is 25 thousand cubic feet per second (kcfs). Thus, the maximum augmentation that can be expected from Dworshak would be somewhere in the range of 20 kcfs, if it were discharging 5 kcfs under normal operations.

In contrast, the effects of drawing down the elevations of run-of-river reservoirs to increase water velocity (reducing the cross-sectional area of the reservoirs) would be significant and directly related to magnitude of the drawdown. For example, the effects of drawing the projects down to run-of-river spillway crest (a 20 to 30-foot drawdown) would be much greater than drawing the projects down to MOP (a reduction of 3 to 5 feet). This is because increasing velocities by drawdown of the mainstem projects is directly related to changes in pool elevations.

Drawdown would have a number of environmental impacts. Riparian habitat would be lost or impacted by the loss of available water. In turn, wildlife and resident fish would be impacted by the loss of these habitats. Banks and shallow water areas would be exposed and erosion would increase. This in turn would degrade water quality by increasing turbidity and resuspending pollutants and would degrade air quality by increasing the opportunity for wind blown dust from dried out shallow areas. In addition, exposed banks and shallow areas would expose cultural and historical resources to damage and unauthorized removal. Recreation and aesthetics would be adversely impacted by the loss of surface water and the exposure of large expanses of mud flats.

Potential environmental effects are also related to the magnitude of the drawdown. All of the facilities of existing run-of-river projects are designed to be operated at greatest effectiveness in the narrow range of full pool to MOP. Accordingly, the effectiveness of turbines, navigation facilities, fish bypass systems, adult passage systems, and flip lips decrease as pool levels are reduced. Thus, if run-of-river projects are to be operated at pool elevations below MOP, substantial modifications to mitigate environmental effects would be required.

The combination of flow augmentation and drawdown would increase water velocity in direct proportion to the magnitude of the flow augmentation and drawdown. For example, it would be possible to reduce the time it takes a particle of water to travel from the mouth of the Clearwater to just below Bonneville Dam to less than 15.1 days. This would be done by drawing the lower Snake River projects down to near spillway crest, drawing the lower Columbia River projects down to MOP and augmenting existing Water Budget flows (total of about 4.2 MAF).

Reservoir drawdown entails drawing the lower Snake River projects down to near spillway crest. However, it is associated with a number of adverse impacts on the species it is proposed to benefit. Drawing down the Snake River projects to near spillway crest would result in high nitrogen supersaturation levels, eliminate the operation of existing juvenile bypass facilities, disrupt or eliminate the operation of existing adult passage facilities, and eliminate the opportunity to transport juveniles by barge. Since it was not possible to redesign and retrofit projects to compensate for these adverse effects in time for the 1992 fish migration season (some redesign and retrofit could require several years to complete), drawdown to near spillway crest was eliminated as an option for 1992.

C. ESA, Section 7 Consultation

The actions evaluated in the 1992 Flow Options EIS are designed to improve conditions for fish listed and proposed for listing under ESA. Thus, while the EIS is a relevant tool for evaluating the relative impacts of different alternatives and options, ESA considerations will play a determining role in deciding which actions are to be implemented in 1992. Accordingly, biological assessments were prepared by BPA and the Corps pursuant to Section 7 of ESA.

One assessment, addressing the effects of the alternatives on bald eagles and peregrine falcons was evaluated by the U.S. Fish and Wildlife Service (USFWS). The USFWS reported a finding of no adverse effect on these two species in a letter dated February 10, 1992.

The assessments developed by BPA and the Corps for Snake River sockeye, spring/summer chinook, and fall chinook salmon were evaluated by NMFS. The approach NMFS used to evaluate the 1992 operations is illustrated on pages 15 and 16 (Section IV.A.1) of the Biological Opinion prepared April 10, 1992.

During consultation, NMFS recommended a number of additional actions. In NMFS' view, these additional actions, when coupled with the actions already in place and changes recommended by the 1992 Flow Options EIS, would avoid jeopardizing the continued existence of Snake River sockeye and chinook salmon in 1992. These changes are:

1. Extend the duration of the 900 KAF Water Budget from Dworshak by 15 days (from April 15–May 31, 1992 to April 15 to June 15, 1992);

2. Replace the temperature control test with a summer flow augmentation action in which 400 KAF of water would be released from either the upper Snake River projects or from Dworshak, or in some combination, to augment Snake River flows between June 16 and August 30, 1992. Any release from Dworshak would be over and above the minimum discharge of 1.2 KCFS;

3. Monitor and evaluate real time flow and fish migration throughout the 1992 fish passage season;

4. Provide 40 percent of the instantaneous flow at Lower Monumental as spill for 12 hours a day from April 15, 1992, until results from the Fish Guidance Efficiency (FGE) tests are available. The 1992 FGE results will then be used to determine appropriate spill, if any, to achieve 70 percent fish passage efficiency through May 31, 1992. Sixty percent of the instantaneous flow at Ice Harbor from April 15 to May 31, 1992, will be spilled for 12 hours per day; and

5. Provide 43 percent of the instantaneous flow as spill for 12 hours per day from June 1 to August 15, 1992, at Lower Monumental and 30 percent of the instantaneous flow at Ice Harbor as spill for 12 hours per day from June 1 to August 22, 1992. If new information indicates that the 1992 migration is not similar to that observed in 1991 and more spill is needed, then consultation with NMFS will be reinitiated.

BPA believes that, although the modifications are conducive to improvement of the listed species, the actions proposed for 1992, even without these modifications, are not likely to jeopardize Snake River sockeye and chinook salmon. This conclusion results from analyses performed in BPA's Biological Assessment for proposed 1992 river operations, and by additional analyses performed through consultation with NMFS (see supplement to BPA's Biological Assessment, July 1992).

The analysis described in BPA's Biological Assessment shows that improvements in migration survival and the captive rearing program are expected to increase the size and productivity of sockeye salmon populations. With regard to the spring/summer chinook salmon species, the analysis described in the Biological Assessment shows an increasing spawning escapement (i.e., increased

adult spawning population) trend for the spring component and a relatively stable trend in spawning escapement for the summer component. A combination of the components shows an increasing spawning escapement trend for spring/summer chinook salmon. With regard to the fall chinook species, the analysis described in the Biological Assessment also shows an increasing spawning escapement trend for fall chinook salmon.

The additional analysis described in the July 1992 supplement to the Biological Assessment used juvenile passage conditions within the Columbia River Salmon Passage Model (CRiSP) recommended by NMFS. The results show improved sockeye and chinook salmon juvenile survival for 1992 conditions. The life-cycle analyses for chinook salmon show increasing escapement trends for Snake River fall chinook and spring/summer chinook salmon. The analysis also shows low probabilities of spawning numbers below 50 adults. The summer component of the spring/summer chinook salmon species unit shows a continuing downward trend in escapement. However, when combined with the much higher numbers of the spring component, which is increasing in population trend, the aggregate spring/summer chinook species unit shows an increasing escapement trend and very low probability of population numbers below 50 adults. By showing increasing juvenile survival and adult population numbers, and a decreasing probability of low adult population numbers, this additional analysis supports our conclusion of no jeopardy for 1992 operations.

With regard to the flow modifications recommended by NMFS, there is a lack of data regarding the responses of salmon to incremental changes in flow or velocity. Consequently, scientists differ with respect to the benefits that these changes in flow or velocity provide. However, provision of these flow modifications is not likely to adversely affect the availability of water for fish in 1993. The recommended 400 KAF of flow augmentation for June 16 to August 30, 1992, could reduce the probability of refill of Dworshak and thereby impact the water budget in 1993 or later if the entire 400 KAF were to come from Dworshak. However, use of Dworshak will be limited so that it does not affect the probability or refill in 1993.

BPA's proposed river operations for 1992 included the release of cool water from Dworshak reservoir in August and September to reduce water temperatures in the lower Snake River. This would test whether lower river water temperatures help adult Snake River fall chinook salmon pass upstream. Although NMFS believed that releasing this water would benefit adult fall chinook, it preferred that when available water was insufficient to benefit both juvenile fall chinook in July and adult fall chinook in August, the juveniles should receive priority. That is, the water that would have been used in August for the temperature control test should instead be used in July for juvenile fall chinook migration. BPA biologists believe that (1) returning adult fall chinook would benefit from lower water temperatures in reservoirs and dam ladders, especially in low water years, and (2) flow modification, as proposed by NMFS, would not improve survival of juvenile fall chinook. However, recognizing that scientists differ with respect to the use of this water for adults as opposed to juveniles, BPA has decided to act consistently with NMFS' prioritization. BPA is hopeful that, as we get more information on water availability, some aspects of the temperature control test can still be performed in 1992. BPA also believes that, especially if the experiment is not performed this year, it should be performed in future years. The experiment is necessary to resolve differences in opinion and assess how water temperature affects adult migration. In addition, even if water is not released for temperature control this year, other aspects of the temperature control experiment should continue, including model development and temperature monitoring. These activities are essential for future water management decisions and should proceed.

Flow modifications can be implemented under existing authorities of BPA, BR, and the Corps, and most of the modifications are consistent with the conditions outlined in the Fish Spill MOA of 1989 among BPA, fisheries agencies, and Indian Tribes. Because these modifications may provide benefits to anadromous fish and will not impair provision of water in 1993, and legal authority to provide these changes exists, BPA has decided to include these changes in river operations proposed for 1992.

D. Analytical Factors

1. Scope of Analysis

The scope of BPA's consideration of how its proposed actions for 1992 would affect the environment, and whether its proposed actions are likely to jeopardize Snake River salmon listed or proposed for listing as threatened or endangered, is broad. With respect to environmental impacts, BPA participated in the analysis described in the 1992 Flow Options EIS and considered all public comments. With respect to impacts upon species listed or proposed for listing under ESA, BPA prepared its Biological Assessment and engaged in extensive consultation with NMFS. As a result of these consultations, BPA supplemented its analysis, modified the actions that it initially proposed for 1992, and studies NMFS' analysis of its modified proposed actions in NMFS' recently issued Biological Opinion.

The key to avoiding jeopardy and achieving recovery of Snake River sockeye and chinook salmon is increased survival of adults returning to spawn (spawning escapement). Spawning escapement depends upon actions taken by various entities at all stages of the salmon's life-cycle. Consequently, the extent to which a proposed action affects a listed species, in part, depends upon how previous actions have affected it and subsequent actions will affect it. For example, the extent to which changes in river operations for juvenile migration result in increased adult escapement and, thereby, avoid jeopardy and contribute to recovery, depends, in part, upon habitat conducive to hatching and rearing of smolts prior to their migration, and to a harvest-free or harvest-restricted environment allowing adults to return to spawn. Consequently, BPA has analyzed how hydrosystem operations for 1992, when combined with other effects at various stages of the species' life-cycles, affect survival of anadromous fish. This approach is consistent with NMFS' request that the Biological Assessment evaluate the effects of river operations in terms of survival (NMFS 1991)

As an action agency, BPA has independently performed its analysis and used its own modeling to assess the potential environmental impacts of the proposed action and to determine whether the proposed action is likely to cause jeopardy to listed species. The analysis entails the exercise of professional judgment of BPA's biologists, after consideration of extensive modeling and additional qualitative factors. For a detailed description of this analysis, please see the Biological Assessment and the "Analytical Tools" section of this ROD.

Using its own analysis, NMFS concludes that the proposed action is not likely to cause jeopardy to Snake River sockeye or chinook salmon. This fact shows that two different

approaches have reached the same result.

BPA's analysis takes into consideration some Federal actions for which consultation has not been completed, such as the Snake River sockeye salmon captive rearing program. Such actions are designed to improve conditions for fish and are likely to occur. Inclusion of these actions in BPA's analysis is consistent with NMFS' request that the assessment address all three "phases" of this consultation: (1) Specific flow measures described in the EIS; (2) other river system operations, including transport, flows not addressed in the EIS, and predation control; and (3) hydroelectric project operation and maintenance activities. (December 23, 1991, Letter from Regional Director Rolland Schmitten to Corps Director of Planning and Engineering Robert P. Flanagan.) It is also consistent with the direction that appropriate consideration by given to beneficial actions taken by the action agency (50 CFR 402.14(g)(8)).

BPA's analysis takes into consideration harvest activities. Ocean fishing outside the 3-mile limit is regulated by the Federal government under the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1801 *et seq).* Consideration of the adverse effects of harvest is important to considering how river operations affect the survival of Snake River sockeye and chinook salmon. Consequently, BPA incorporates analysis of ocean harvest.

BPA's analysis also considers in-river harvest. Consideration of the adverse effects of in-river harvest is important to considering how river operations affect the survival of Snake River sockeye and chinook salmon. Consequently, BPA's analysis includes study of in-river harvest.

2. Analytical Tools Used

BPA has used state-of-the-art models and best available scientific information to evaluate the 1992 proposed river operations and mitigation conditions. These models provide information on juvenile passage survival for chinook and sockeye, and multigeneration spawning escapement trends for chinook. They are an essential tool for a comprehensive evaluation of the many factors that combine to affect juvenile system survival to below Bonneville Dam and the long-term population viability of the listed salmon stocks. A comprehensive analysis (relative to a narrower focus on individual actions or life stages) is critical to a jeopardy/no jeopardy determination.

In order to determine whether the proposed hydro operations for 1992 are likely to jeopardize the continued existence of listed species or species proposed for listing, BPA believes it is necessary to analyze available information and data in two ways. First, we have looked at the 1992 hydro operations relative to the 1990 baseline to determine if the operations decrease, effect no change in, or increase survival of juveniles in 1992. Second, where possible we have employed the use of the Stochastic Life Cycle Model (SLCM) (see Biological Assessment, 1992 Operation of the Federal Columbia River Power System, January 13, 1992, Appendix B) to determine the expected spawning escapement trend of each population over the next 40 years if the proposed 1992 hydro operations were continued into the future. Also included in the analyses are actions that are certain to occur, or that have a high probability of occurring in the near term. These include actions such as installation of additional bypass improvements, better control of predators, extended transportation periods, and reductions in harvest.

BPA believes that the employment of the SLCM or comparable comprehensive life-cycle models is of extreme importance in determining the eventual fate of a population of andromous fish because of the temporal and spatial distribution of the population. Since in any given year fish from 4 or more brood years are distributed throughout the species' range as rearing juveniles, outmigrants, subadults, or adults, it is extremely unlikely that a single adverse event could jeopardize the species. However, while for any single year it is possible to demonstrate improvement in survival of one or more life stages resulting from a proposed action it is also possible that such improvement alone could be insufficient to reverse a long-term downward trend in the population. We believe life-cycle modeling must be employed to judge the overall effect of a set of actions on a species. We believe this is appropriate since BPA views the actions proposed for 1992 hydro operations as long-term objectives—unless they are shown to be ineffective or unnecessary.

A fish passage model was used to evaluate juvenile sockeye survival. The development of a life-cycle model to project sockeye salmon escapement trends was not complete at the time of this analysis. Sockeye salmon abundance is estimated by calculations of expected sockeye salmon production from captive breeding programs and the natural environment. (See Appendix F of BPA's Biological Assessment for a complete description of the methodology for estimating sockeye salmon production.)

BPA recognizes the concerns expressed by NMFS in their Biological Opinion regarding the use of CRiSP and SLCM. We realize that the existing data necessary to predict impacts can be improved and that there is a significant level of uncertainty and variability inherent in biological systems. The analyses have attempted to capture some of this uncertainty. BPA has noted in its Biological Assessment that the results of the models should not be used as absolute or specific predictions of future population numbers. Instead, the model results should and can be used to assess the relative change in the passage survival level or in the population trend between the 1990 baseline operation and alternative future conditions. Additional, rigorous analysis will continue to be performed by BPA as we attempt to address the uncertainty in the data. The models are the best available scientific method for a quantitative assessment of the relative effect of the proposed actions. The results of the analyses are valuable and necessary to help determine a jeopardy or no jeopardy conclusion for 1992 river operations.

To assess improvements to survival, NMFS seeks reductions in mortality from baseline levels (Biological Opinion, p. 16). Although NMFS' methodology is different from BPA's, NMFS' approach reaches a similar conclusion and, thereby, corroborates BPA's analysis.

E. Economic Factors

The potential economic effects of the various options considered were a significant issue to a number of different water resource users. Like environmental effects, economic effects were directly related to the magnitude of the augmentation and drawdown proposal. For example, reserving water (storing in winter and early spring) for the purpose of augmenting flows in spring or summer reduces the amount of water that will be available for hydropower production in winter (the period of highest power demand in the Pacific Northwest) and increases generation at a time when the power has less value.

Drawdown of the lower Snake River and lower Columbia River projects to below MOP would significantly impact most river users since project facilities are typically designed to operate within the range of MOP to full pool. Navigation facilities would be eliminated since there would be insufficient water depth to operate the locks. Loss of navigation would impact

other transportation services. Irrigation would be impacted since most operators set the intake ports just below the lowest normal pool level in summer (usually MOP). Loss of irrigation water would result in crops losses, lost capital investments, and secondary and tertiary losses.

Power production would also be impacted since operation of the generators below MOP can be accomplished only at reduced efficiencies. Since operating the generators at reduced efficiencies results in higher mortality of the salmon that pass through the generators, it was assumed in the EIS that the generators would not be operated when the pools were drafted below MOP. Finally, power production will be affected by refill requirements at both storage and run-of-river projects, the duration of the drawdown, and the requirement to hold the run-of-river pool elevations within a narrow daily range (e.g., 12 to 18 inches). Power production is reduced when the opportunity to vary the daily discharge to meet the variation in daily load is reduced and the longer a pool is held at a lower than normal elevation. Finally, if the pools are held at a low elevation into late summer when inflow is low, power production will be further degraded when discharges are reduced to refill the projects.

BPA has estimated the costs of replacing the energy losses due to the various options to range from $200-$240 million in 1991 dollars for the most severe run-of-river drawdown option to about $78-149 million for the proposed action. These estimates are based on the following assumptions: (1) Firm Energy Load Carrying Capability replacement costs would be about 35 mills/kwh; (2) capacity replacement costs in May and June would be about $4 kilowatt (kW)/month for losses of 1000 to 3000 Megawatts (MW) and about $10 kW/month for capacity losses above 3,000 MW. Capacity replacement costs in other months would be about $4 kW/month; and (3) nonfirm replacement costs would be about 15 mills/kilowatthours. Because of the difficulty of estimating power replacement costs, these numbers should be used as a relative index of power costs, not firm estimates of costs.

V. Mitigation, Monitoring, and Research

Since the proposed action will improve conditions for endangered and threatened salmon species, no mitigation is required.

In addition to the monitoring called for in the 1992 Flow Options EIS and in the NMFS Biological Opinion, monitoring is an ongoing activity of a number of Federal, State, Tribal, and regional authorities.

The Corps monitors adult and juvenile fish passage past Federal projects, conducts or sponsors ongoing research on anadromous fish and participates in similar research programs of other organizations. The Corps also operates 17 stations along the river system that monitor water quality. BPA sponsors a wide variety of fish research and enhancement evaluation programs related to reservoir mortality, hatchery production, disease, spawning habitat and numerical modeling of system fish survival. The Fish Passage Center, funded by BPA, monitors each year's juvenile out migration, system operations, fish passage, and power generation data from BPA and the Corps. NMFS, state fish and wildlife agencies and Indian Tribes conduct fish research and monitoring studies.

In 1992, ongoing work under a number of contracts will continue to address the near term needs for measuring survival of both smolts and adults in relation to flow and other environmental variables. For juvenile salmon this work includes: (1) Developing the statistical frameworks for survival estimation and analysis; (2) compilation and further analysis of existing travel time and survival data sets to extract additional information; (3) identifying protocols for estimating smolt survival in the Columbia and Snake Rivers; (4) studying the relationship between smolt travel time and flow, physiological condition, stock origin, time of migration, and other environmental factors, through use of existing Passive Integrated Transponder (PIT) tag detectors and other methods; and (5) installation of additional PIT tag facilities. For adult salmon this work includes performing the multivariate analysis of the survival rates of Columbia River hatchery stocks from coded-wire tag analysis to evaluate flow-related and other environmental effects.

Improved protocols for survival experiments will be available for testing in 1992 including statistical methods powerful enough to reliably examine the causal relationships between river flow and other environmental factors on survival differences. However, implementation in 1992 is dependent upon the support of regional fish and wildlife agencies and Indian Tribes and the return of PIT tag-detected juvenile fish back into the Snake River at Lower Granite Dam using existing PIT tag facilities.

For 1993 and beyond we will have the ability to make individual estimates of smolt survival within selected reaches in the Snake River System and relate these estimates to travel time and other environmental and biological variables. As more PIT tag facilities become operational, we will be able to expand the scope of investigations to study the relationship between smolt survival and flow, fish health, physiology, travel time, and other factors. For adult salmon, we will have the analytical capability to combine estimates of juvenile and adult survival to characterize the relationship between smolt and adult survival and biological and environmental parameters including flow.

Improved analytical techniques will permit us to integrate the concept of survival over the entire life-cycle of Snake and Columbia River salmon stocks. Such improvements will facilitate development of ways to increase adult returns of anadromous fish.

VI. Conclusion

The proposed plan for improving flow conditions for salmon in the Columbia River Basin in 1992, as developed by the separate actions of BPA and the Corps, is the environmentally preferred alternative of the 1992 Flow Options EIS. It satisfies the request made by the Salmon Summit to recommend a set of actions that would improve passage of juvenile salmon in 1992 without impeding the passage of adults. It is also in general agreement with the recommendations of state and regional agencies in the Columbia River Basin, with the Power Planning Council's Phase II Fish and Wildlife Program Amendments, and with the recommendations presented in the Biological Opinion developed by NMFS. In selecting the preferred alternative, BPA has adopted all practicable means to avoid or minimize environmental harm. Most importantly, using the best available scientific evidence, BPA concludes that its proposed action is not likely to jeopardize Snake River sockeye or chinook salmon.

Issued in Portland, Oregon, on July 8, 1992.

Randall W. Hardy,

Administrator.

[FR Doc. 92-19088 Filed 8-10-92; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of request submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. No. 96–511, 44 U.S.C. 3501 *et seq.*). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (a DOE component which term includes the Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, extension, or reinstatement; (6) Frequency of collection; (7) Response obligation i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses per respondent annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed on or before September 10, 1992. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so, as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, Please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.).

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards, (EI–73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202 254–5348.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission.
2. FERC–523.
3. 1902–0043.
4. Application for Authorization of the Issuance of Securities or the Assumption of Liabilities.
5. Extension.
6. On occasion.
7. Mandatory.
8. Businesses or other for-profit.
9. 60 respondents.
10. 1 response.
11. 120 hours per response.
12. 7200 hours.
13. This applies to any issuance of a security or assumption of obligation or liability by public utility or licensee for which approval must be obtained by this Commission.

Statutory Authority: Sec. 5(a), 5(b), 13(b), and 52, Pub. L. No. 93–275, Federal Energy Administration Act of 1974, 15 U.S.C. § 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC., August 5, 1992.

Yvonne M. Bishop,

Director, Statistical Standards Energy Information Administration.

[FR Doc. 92–19086 Filed 8–10–92; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER92–616–000; et al.]

Louisville Gas & Electric Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

August 3, 1992.

Take notice that the following filings have been made with the Commission:

1. Louisville Gas & Electric Company

[Docket No. ER92–616–000]

Take notice that Louisville Gas and Electric Company, by letter dated July 28, 1992, tendered for filing an amendment to its filing dated June 4, 1992. The original filing was a new Unit Power Purchase Agreement, along with the First Supplemental Agreement to the Interconnection Agreement, dated February 7, 1989, between Louisville and Indiana Municipal Power Agency.

This amendment to the Unit Power Purchase Agreement provides clarification on the issues of Substitute Energy and costs related to Trimble County, and requires LG&E to file with the Commission for a change in rate should its charges to IMPA be adjusted pursuant to certain provisions of the Agreement.

Copies of the amended filing were served upon IMPA, the Kentucky Public Service Commission, and the Indiana Utility Regulatory Commission.

Comment date: August 17, 1992, in accordance with Standard Paragraph E at the end of this notice.

2. Consumers Power Company

[Docket No. ER92–754–000]

Take notice that on July 29, 1992, Consumers Power Company (Consumers) tendered for filing five Facilities Agreements with the Michigan Public Power Agency (MPPA), the Cities of Harbor Springs, Petoskey and Charlevoix (the Cities). The filed Facilities Agreements provide for Consumers, the MPPA and the Cities to construct and own various electric lines, substation, metering and telemetering equipment at various points of interconnection in order to facilitate formation of a new operating entity called the Municipal Cooperative Coordinated Pool. Certain facilities costs incurred by Consumers are to be reimbursed by the MPPA and the Cities. A copy of the filing was served upon the MPPA, the Cities, and the Michigan Public Service Commission.

Comment date: August 17, 1992, in accordance with Standard Paragraph E at the end of this notice.

3. San Diego Gas & Electric Company

[Docket No. ER92–752–000]

Take notice that on July 29, 1992, San Diego Gas & Electric Company (SDG&E) tendered for filing and acceptance, pursuant to 18 CFR 35.13, and Umbrella Agreement with BPA which provides for the purchase and sale of surplus energy, and/or surplus capacity, power exchanges, and/or other services which the Parties may agree from time to time to make available and purchase for short-term periods not to exceed 12 months.

SDG&E requests waiver of the Commission's prior notice requirements and an effective date of June 30, 1988.

Comment date: August 17, 1992, in accordance with Standard Paragraph E at the end of this notice.

4. San Diego Gas & Electric Company

[Docket No. ER92–751–000]

Take notice that on July 29, 1992, San Diego Gas & Electric Company (SDG&E) tendered for filing and acceptance, pursuant to 18 CFR 35.12, the Coordination of Services Agreement (Agreement) between SDG&E and the City of Seattle, City Light Department.

SDG&E requests that the Commission allow the Agreement to become effective August 1, 1992 or at the earliest possible date.

Copies of this filing were served upon the Public Utilities Commission of the State of California and Seattle.

Comment date: August 17, 1992, in accordance with Standard Paragraph E at the end of this notice.

5. Florida Power Corporation

[Docket No. ER92-337-000]

Take notice that on July 28, 1992, Florida Power Corporation (Florida Power) filed a letter as a result of discussions with the Commission's Staff, stating that Florida Power hereby agrees that its total charges under Section 14 of the April 20, 1987 Operation and Maintenance Agreement between Florida Power and Seminole Electric Cooperative, Inc., will not exceed the charges resulting from the application of the formula attached thereto. Florida Power requested that this letter and the attached formula be accepted as supplements to the Agreement.

Comment date: August 17, 1992, in accordance with Standard Paragraph E at the end of this notice.

6. Western Systems Power Pool

[Docket No. ER91-195-004]

Take notice that on July 15, 1992, the Western Systems Power Pool (WSPP) filed certain information as required by Ordering Paragraph (D) of the Commission's June 27, 1991 order (55 FERC ¶61,495) and Ordering Paragraph (C) of the Commission's June 1, 1992 Order On Rehearing Denying Request Not To Submit Information, And Granting In Part And Denying In Part Privileged Treatment. Pursuant to 18 CFR 388.211, WSPP has requested privileged treatment for some of the information filed consistent with the June 1, 1992 order. Copies of WSPP's information filing are on file with the Commission, and the non-privileged portions are available for public inspection.

7. Central Power and Light Company

[Docket No. ER92-755-000]

Take notice that on July 29, 1992, Central Power and Light Company (CPL) tendered for filing an Interchange Agreement, a letter supplementing such Interchange Agreement and an Interconnection Agreement between CPL and South Texas Electric Cooperative, Inc. (STEC). The Agreements establish two new points of interconnection between the transmission systems of CPL and STEC.

CPL requests an effective date of September 30, 1992, for both Agreements. Copies of the filing were served on STEC and the Public Utility Commission of Texas.

Comment date: August 17, 1992, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-18997 Filed 8-10-92; 8:45 am]

BILLING CODE 6717-01-M

Application Filed With the Commission

July 21, 1992.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection.

a. *Type of Application:* Minor License.

b. *Project No.:* 11120-001.

c. *Date filed:* June 23, 1992.

d. *Applicant:* Cameron Gas and Electric Company.

e. *name of Project:* Middleville Hydroelectric Water Project.

f. *Location:* on the Thornapple River, Thornapple Township, Barry County, Michigan.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Jan Marie Evans, Cameron Gas and Electric Company, 4572 Sequoia, Okemos, MI 48864, (517) 351-5400.

i. *FERC Contact:* Mary C. Golato (202) 219-2804.

j. *Comment Date:* August 24, 1992.

k. *Description of Project:* The proposed project would consist of the following facilities: (1) A existing concrete gravity dam 12 feet high and 80 feet long; (2) an existing reservoir with a storage capacity of approximately 30 acres and a normal maximum surface elevation of 708.5 feet mean sea level; (3) an existing penstock approximately 25 feet by 25 feet; (4) an existing powerhouse with one generating unit having a capacity of 350 kW; (5) an existing transmission line approximately 100 feet long; and (6) appurtenant facilities. The owner of the dam is Middleville Power Company. The applicant estimates that the average annual generation would be 1,400,000 kilowatthours, and the estimated cost of the project is $88,000.

1. Pursuant to § 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the issuance date of this notice and serve a copy of the request on the applicant.

Lois D. Cashell,

Secretary.

[FR Doc. 92-19019 Filed 8-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP92-621-000, et al.]

Florida Gas Transmission Company, et al.; Natural Gas Certificate Filings

August 3, 1992.

Take notice that the following filings have been made with the Commission:

1. Florida Gas Transmission Company

[Docket No. CP92-621-000]

Take notice that on July 30, 1992, Florida Gas Transmission Company (FGT), P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP92-621-000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to construct and operate facilities permitting FGT to add a new delivery point for Peoples Gas System, Inc. (Peoples), under its blanket certificate issued in Docket No. CP82-553-000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

FGT proposes to construct and operate a new meter station in Orange County, Florida, referred to as the Orlando Turnpike delivery point, to accommodate jurisdictional gas sales to

Peoples under two existing sales service agreements (Rate Schedules G and I).

FGT states that the proposed construction was requested by Peoples to accommodate the geographic shift of its market requirements within its traditional service territories. FGT proposes to deliver up to 23,600 million Btu on a daily basis, and 5,509,580 million Btu on an annual basis to Peoples through the new delivery point for commercial, industrial and residential end uses. FGT also states that the proposed construction would not affect the maximum daily quantities or the maximum annual contract quantity in the Rate Schedule G service agreement nor would it affect the annual volumetric entitlement in the Rate Schedule I service agreement. Also, it is indicated that the gas deliveries would be served from the total firm entitlements currently assigned to the Orlando Division and would not impact FGT's peak day or annual deliveries.

It is indicated that the Orlando Turnpike delivery point would include a 6-inch turbine meter, a regulator, a relief valve, and any other necessary appurtenant facilities to accommodate the measurement of gas up to 1,095 million Btu per hour. FGT also proposes to construct two new 6-inch hot taps on FGT's existing 24-inch and 26-inch mainlines, as well as approximately 750 feet of 6-inch line to connect the proposed meter station to FGT's 24-inch and 26-inch mainlines. FGT estimates cost of construction of $421,760. FGT also indicates that Peoples would reimburse FGT for all costs directly and indirectly incurred by FGT for all proposed construction.

Comment date: September 17, 1992, in accordance with Standard Paragraph G at the end of this notice.

2. United Gas Pipe Line Company

[Docket No. CP92-623-000]

Take notice that on July 30, 1992, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP92-623-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a new delivery point for service to Mobil Natural Gas, Inc. (Mobil), in St. Mary Parish, Louisiana, under United's blanket certificate issued in Docket No. CP82-430-000, all as more fully described in the request which is on file with the Commission and open to public inspection.

United proposes to construct and operate the delivery point, consisting of a tap and meter station including regulating and appurtenant facilities, and to install approximately 257 feet of 2-inch line at Mobil's intracoastal loading dock facility near Burns, Louisiana. It is stated that the facilities are required for United to deliver an estimated daily volume of 1,048 MMBtu to Mobil under an open-access transportation agreement pursuant to the terms of United's ITS Rate Schedule. It is estimated that the cost of installing the facilities would be $51,925, and it is asserted that Mobil would reimburse United for the cost.

Comment date: September 17, 1992, in accordance with Standard Paragraph G at the end of this notice.

3. Natural Gas Pipeline Company of America

[Docket No. CP92-611-000]

Take notice that on July 24, 1992, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP92-611-000, an application pursuant to section 7(b) and section 7(c) of the Natural Gas Act to abandon 48 horizontal engine compressors, three intermediate compressor stations, and approximately 18.88 miles of the original 24" Amarillo No. 1 mainline in Kansas, and to replace these facilities by the construction and operation of four compressor engines and by upgrading another compressor station in order to increase the horsepower at those same stations at an estimated cost of $2.7 million, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Natural indicates that the facilities proposed are necessary because the upgrade reduces operating costs by eliminating or replacing parts of the system that are obsolete and require high operation and maintenance costs. Natural also states that the proposed facilities would allow for it to maintain the required market deliverability from all supply sources connected to its system.

Comment date: August 24, 1992, in accordance with Standard Paragraph F at the end of this notice.

4. East Tennessee Natural Gas Company

[Docket No. CP92-622-000]

Take notice that on July 30, 1992, East Tennessee Natural Gas Company (East Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP92-622-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a delivery point, consisting of a 2-inch hot tap and meter to accommodate the delivery of natural gas to Virginia Gas Company (Virginia Gas) in Russell County, Virginia, under East Tennessee's blanket certificate issued in Docket No. CP82-412-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

East Tennessee states that it has entered into an amendment to a gas transportation agreement with Virginia Gas, effective July 1, 1992, to establish a new delivery point so as to transport up to 5,000 dekatherms per day on an interruptible basis under East Tennessee's Rate Schedule IT. It is said that Virginia Gas requested East Tennessee to construct these facilities and that all costs associated with the construction would be reimbursed to East Tennessee.

Comment date: September 17, 1992, in accordance with Standard Paragraph G at the end of this notice.

5. United Gas Pipe Line Company

[Docket No. CP92-617-000]

Take notice that on July 28, 1992, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP92-617-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a segment of its Baton Rouge-New Orleans mainline, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United proposes to abandon approximately 4.48 miles of 18-inch pipeline and appurtenant facilities located in St. Charles and Jefferson Parishes, Louisiana. United proposes to abandon the facilities by removal, with the exception of 1,756 feet, consisting of highway and railway crossings and a segment crossing a trailer park subdivision, which would be abandoned in place. It is stated that the pipeline is 60 years old and obsolete. It is asserted that United has a 16-inch loop line parallel to the segment proposed for abandonment and that this loop line has sufficient capacity to make up for that being abandoned. It is estimated that the cost of removal would be $125,368 and that the salvage value would be $94,618.

Comment date: August 24, 1992, in accordance with Standard Paragraph F at the end of the notice.

6. Northern Natural Gas Company

[Docket No CP92-615-000]

Take notice that on July 27, 1992, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124-1000, filed in Docket No. CP92-551-000, a request pursuant to § 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act, for authority to install and operate one new delivery point, to upgrade seven existing delivery points, and to construct approximately 2.5 miles of looping on the existing Elk River 20" Branchline and 4 miles of looping on the existing Minnesota 12" Branchline, all located in Minnesota to accommodate natural gas deliveries and transportation service to Midwest Gas Company (Midwest Gas), all as more fully set forth in the request on file with the Commission and open to public inspection.

Northern states that the upgrade of these facilities is necessary due to load growth and expansion of their distribution system to new areas and that the end use of the gas will be commercial, industrial and residential. Northern estimates the proposed facilities would initiate a volume increase of 11,005 Mcf/d and 730,000 MMcf/yr and the cost of the facilities to be $804,000.

Comment date: September 17, 1992, in accordance with Standard Paragraph G at the end of this notice.

7. Arkla Energy Resources, a division of Arkla, Inc.

[Docket No. CP92-610-000]

Take notice that on July 24, 1992, Arkla Energy Resources (AER), a division Arkla, Inc. (Arkla), Post Office Box 21734, Shreveport, Louisiana 71151, filed a prior notice request with the Commission in Docket No. CP92-610-000 pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to operate certain facilities as jurisdictional facilities, under AER's blanket certificate issued in Docket Nos. CP82-384-000 and CP82-384-001, all as more fully set forth in the application which is open to public inspection.

AER proposes to operate the interconnection between AER and LGS Intrastate (LGS) in Ouachita Parish, Louisiana, as a jurisdictional facility to provide jurisdictional services, including transportation services under subpart G of part 284 of the Commission's Regulations. AER constructed and completed the LSG interconnection in February 1987 solely to provide services authorized under section 311 of the Natural Gas Policy Act of 1978 and subpart B, part 284, of the Regulations at a cost of $306,057.

Comment date: September 17, 1992, in accordance with Standard Paragraph G at the end of this notice.

8. Columbia Gas Transmission Corporation

[Docket No. CP92-616-000]

Take notice that on July 27, 1992, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314 filed in Docket No. CP92-616-000, a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to establish an additional point of delivery to an existing wholesale under the blanket certificate issued in Docket No. CP83-76-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Columbia states that it requests authorization to provide to Piedmont Natural Gas Company, PNG—Nashville Gas Company, a division of PNG, a total of 500 Dth/d of contract demand sales service and 1,000 Dth/d of Winter Service at an existing interconnection of Columbia Gulf Transmission Company (Columbia Gulf) and PNG to serve Nashville Gas Company, a division of PNG.

Columbia also states that the quantities of natural gas to be provided through the additional delivery point are within Columbia's currently authorized service level to PNG which is 5,000 Dth/d of contract demand with an Annual Entitlement of 1,472,826 Dth and 10,000 Dth/d of Winter Service with 600,000 Dth of Winter Contract Quantity as authorized in Docket No. CP90-679-000.

Columbia further states the proposed service will be rendered by establishing a new point of delivery from Columbia Gulf to Columbia at an existing interconnection between the facilities of Columbia Gulf and PNG. Columbia also states that Columbia Gulf would provide Transportation service for Columbia of the quantities of PNG's CDS and WS Service under Columbia Gulf's existing T-1 Rate Schedule.

No new or additional facilities are required by Columbia or PNG to render the service proposed herein.

Comment date: September 17, 1992, in accordance with Standard Paragraph G at the end of this notice.

9. K N Energy, Inc.

[Docket No. CP92-618-000]

Take notice that on July 29, 1992, K N Energy, Inc. (K N), P.O. Box 281304, Lakewood, Colorado 80228, filed in Docket No. CP92-618-000 a request pursuant to §§ 157.205(b) and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205(b) and § 157.211) for authorization to construct and operate sales taps for the delivery of gas to end users and under K N's blanket certificate issued in Docket No. CP83-140-000, as amended, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

K N requests authorization to construct and operate sales taps to various end users located along its jurisdictional pipelines. K N states that the proposed sales taps are not prohibited by any of its existing tariffs and that the additional taps will have no significant impact on its peak day and annual deliveries.

Comment date: September 17, 1992, in accordance with Standard Paragraph G at the end of this notice.

10. Northern Natural Gas Company

[Docket No. CP92-612-000]

Take notice that on July 27, 1992, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124, filed in Docket No. CP92-612-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon an emergency standby service for Southwestern Public Service Company (SWPS), successor in interest to New Mexico Electric Service Company (New Mexico Electric), at its Maddox Electric Generating Station located near Hobbs, New Mexico, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern states that it was authorized in Docket No. CP67-138 to provide only emergency service to New Mexico Electric pursuant to an agreement dated March 14, 1968. Northern asserts that SWPS has recently removed all pipeline facilities downstream of Northern's measurement facilities and, therefore, can no longer receive service from Northern under the agreement. Northern

further states that SWPS has, by letter dated July 22, 1992, agreed to the abandonment.

Northern does not propose to abandon any facilities.

Comment date: August 24, 1992, in accordance with Standard Paragraph F at the end of this notice.

11. Tennessee Gas Pipeline Company

[Docket No. CP92-613-000]

Take notice that on July 27, 1992, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP92-613-000 a request pursuant to § 157.205 of the Commission's Regulations to expand an existing delivery point in Morgan County, Ohio to increase capacity for interruptible transportation services that Tennessee currently provides to M&B Industrial Development Corporation (M&B) under Tennessee's blanket certificate issued in Docket No. CP82-413-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee proposes to expand the Brown's Run meter station (Brown's Run) in Morgan County, Ohio to increase its capacity to 120,000 dth of natural gas per day by installing an 8-inch hot tap assembly on its existing right-of-way. Tennessee states that the existing facilities would be expanded to accommodate increased natural gas deliveries to Southeastern Natural Gas Company (Southeastern), a Hinshaw pipeline and affiliate of M&B, for the account of M&B. M&B has requested increased deliveries from 40,000 dth to 120,000 dth of natural gas per day from Tennessee at Brown's Run and has agreed to reimburse Tennessee for the cost of the expanded facilities which are estimated to cost $35,369, it is stated. Tennessee states that the total quantities to be delivered to M&B through the new expanded facilities would not exceed presently authorized quantities and the changes proposed are not prohibited by Tennessee's tariff. Tennessee has sufficient capacity in its system to accomplish the increased delivery of natural gas at Brown's Run without detriment or disadvantage to any of Viking's other customers, it is stated.

Comment date: September 17, 1992, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 18998 Filed 8-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-6-1-000]

Alabama-Tennessee Natural Gas Co; Proposed PGA Rate Adjustment

August 5, 1992.

Take notice that on July 31, 1992, Alabama-Tennessee Natural Gas Company ("Alabama-Tennessee"), Post Office Box 918, Florence, Alabama 35631, tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet with a proposed effective date of August 1, 1992:

33rd Revised Sheet No. 4

Alabama-Tennessee states that this filing is an out-of-cycle purchase gas adjustment ("PGA") filing, the purpose of which is to correlate more accurately Alabama-Tennessee's projected gas costs with the rates of its upstream pipeline supplier, Tennessee Gas Pipeline Company ("Tennessee"). Alabama-Tennessee states that on July 27, 1992, it received the Transition Gas Inventory Charge ("TGIC") commodity cost of natural gas purchases for the month of August, 1992 from Tennessee in accordance with the so-called "Cosmic Settlement" which the Federal Energy Regulatory Commission ("Commission") approved in Docket Nos. RP88-228, et al. According to Alabama-Tennessee, this information shows that Tennessee's sales commodity rates will increase substantially from the rates that have been in effect since July 1, 1992, and upon which Alabama-Tennessee's recent out-of-cycle quarterly PGA filing submitted on July 1, 1992 in Docket No. TQ92-5-1-000 ("July 1 Filing") was based. Alabama-Tennessee states that, as a result, the commodity gas costs shown in Alabama-Tennessee's July 1 Filing are significantly understated.

In addition to the increase in Tennessee's TGIC commodity sales rates, Alabama-Tennessee's filing reflects the impact of Tennessee's reconciliation charge which is not applicable to conversions by Tennessee's customers from firm sales to firm transportation service under the Cosmic Settlement. Alabama-Tennessee has also adjusted its filing to reflect the elimination by Tennessee of its Order No. 94 surcharge.

In addition to a waiver of § 154.22 of the Commission's Regulations so that its revised tariff sheet can be made effective as of August 1, 1992, Alabama-Tennessee has requested any other waivers of the Commission's Regulations that may be necessary to

permit the tariff sheet to become effective as proposed.

Alabama-Tennessee states that copies of the tariff filing have been mailed to all of its jurisdictional sales and transportation customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 or rule 214 of the Commission's Rules of Practice and Procedure 18 CFR 385.211 and 385.214. All such motions or protests should be filed on or before August 12, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-19000 Filed 8-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-4-20-000 & TM92-18-20-000]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

August 5, 1992

Take notice that Algonquin Gas Transmission Company ("Algonquin") on July 31, 1992, tendered for filing proposed changes in its FERC Gas Tariff, Third Revised Volume No. 1, as set forth in the revised tariff sheets, to be effective September 1, 1992:

Primary Tariff Sheets

13 Rev Sheet No. 21
13 Rev Sheet No. 22
9 Rev Sheet No. 25
13 Rev Sheet No. 26
13 Rev Sheet No. 27
13 Rev Sheet No. 28
13 Rev Sheet No. 29
Sub 13 Rev Sheet No. 21
Sub 13 Rev Sheet No. 22
Sub 9 Rev Sheet No. 25
Sub 13 Rev Sheet No. 26
Sub 13 Rev Sheet No. 27
Sub 13 Rev Sheet No. 28
Sub 13 Rev Sheet No. 29

Alternate Tariff Sheets

Alt 13 Rev Sheet No. 21
Alt 13 Rev Sheet No. 22
Alt 9 Rev Sheet No. 25
Alt 13 Rev Sheet No. 26
Alt 13 Rev Sheet No. 27
Alt 13 Rev Sheet No. 28
Alt 13 Rev Sheet No. 29
Alt Sub 13 Rev Sheet No. 21
Alt Sub 13 Rev Sheet No. 22
Alt Sub 9 Rev Sheet No. 25
Alt Sub 13 Rev Sheet No. 26
Alt Sub 13 Rev Sheet No. 27
Alt Sub 13 Rev Sheet No. 28
Alt Sub 13 Rev Sheet No. 29

Algonquin states that the revised alternate and primary tariff sheets listed above are being filed as part of Algonquin's regularly scheduled Quarterly Purchased Gas Adjustment ("PGA") and Transportation Cost Adjustment ("TCA") pursuant to Sections 17 and 39, respectively, of the General Terms and Conditions of Algonquin's FERC Gas Tariff. The sales demand rate reflects an increase of 25.9¢ per MMBtu in the primary sheets and a decrease of 93.8¢ in the substitute sheets from the rates contained in Algonquin's last Quarterly PGA filing, which was made in Docket No. TQ92-3-20-000 on April 30, 1992. This adjustment to the sales demand rate is based upon the latest available rates from Algonquin's various suppliers.

Algonquin also states that the primary tariff sheets listed above reflect the continuation in effect of the prior commodity rate, unadjusted, and the alternate sheets compute a rate based on Algonquin's projected cost of purchasing spot supplies, its unit cost of transporting such supplies to the Algonquin's system, upstream pipeline standby charges, the commodity surcharge established in Algonquin's latest annual PGA filing, and the unit inventory charge incurred as a result of Algonquin's decision to purchase supplies from nontraditional sources rather than upstream pipelines. Algonquin states that the substitute sheets filed herein reflect substitute tariff sheets filed by Texas Eastern in its latest filing.

Algonquin further states that Texas Eastern's latest filing also included changes in the rates underlying Algonquin's Rate Schedule ATAP. Pursuant to Section 4 of Algonquin's Rate Schedule ATAP, Algonquin is filing primary and substitute Sheet Nos. 63 to track the changes made by Texas Eastern in the underlying rates. Pursuant to § 4.2(c) of Rate Schedule ATAP, the proposed effective date of Sheet 63 is August 1, 1992, which coincides with the effective date of Texas Eastern's filing.

Algonquin notes that copies of this filing were served upon each affected party and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 12, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-19001 Filed 8-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA93-1-32-000]

Colorado Interstate Gas Co.; Filing of Annual Purchased Gas Adjustment

August 5, 1992

Take notice that on July 31, 1992, Colorado Interstate Gas Company ("CIG") filed the following proposed tariff sheets to reflect an annual purchased gas adjustment ("PGA"):

Sixth Revised Sheet No. 7.1
Sixth Revised Sheet No. 7.2
Sixth Revised Sheet No. 8.1
Sixth Revised Sheet No. 8.2

CIG requests that these proposed tariff sheets be made effective on October 1, 1992.

The tariff rates underlying Sixth Revised Sheet Nos. 7.1 through 8.2 reflect a net 1.04 cent decrease in the commodity rate for the G-1, P-1, SG-1, H-1, F-1, and PS-1 Rate Schedules, which includes a 0.61 cent increase in the current adjustment attributable to projected purchased gas costs for the quarter beginning October 1, 1992, and a 1.65 cent decrease attributable to the expiration of the current "credit" surcharge (4.57 cents) on September 30, 1992. CIG states that there is no change in the Demand-1 or Demand-2 rates because it does not incur "as billed" charges from its suppliers. CIG states that the proposed rates compare with those it filed on July 14, 1992 in compliance with Commission order issued June 29, 1992 in Docket No. TQ92-3-32-001, which rates are currently pending Commission action.

CIG states that copies of this filing have been served on CIG's jurisdictional customers and public bodies, and the filing is available for public inspection at CIG's offices in Colorado Springs, Colorado.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal

Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such petitions or protests should be filed on or before August 17, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-19002 Filed 8-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-215-000]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

August 5, 1992.

Take notice that Columbia Gas Transmission Corporation (Columbia) on July 31, 1992, tendered for filing the following proposed changes to its FERC Gas Tariff, First Revised Volume No. 1, to be effective September 1, 1992:

Twenty-second Revised Sheet No. 26
Fourteenth Revised Sheet No. 26.1
Twenty-second Revised Sheet No. 26A
Fourteenth Revised Sheet No. 26A.1

Columbia states that the sales rates set forth on Twenty-second Revised Sheet No. 26 and Fourteenth Revised Sheet No. 26.1 reflect a WACOG surcharge of 8¢ per Dth in the Commodity rate.

Columbia states that copies of the filing is being mailed to all jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before August 12, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filings are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-19003 Filed 8-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-6-21-000]

Columbia Gas Transmission Corporation; Proposed Changes in FERC Gas Tariff

August 5, 1992.

Take notice that Columbia Gas Transmission Corporation (Columbia) on July 31, 1992, tendered for filing the following proposed changes to its FERC Gas Tariff, First Revised Volume No. 1, to be effective August 1, 1992.

Twenty-first Revised Sheet No. 26
Thirteenth Revised Sheet No. 26.1
Twenty-first Revised Sheet No. 26A
Thirteenth Revised Sheet No. 26A.1
Twenty-first Revised Sheet No. 26B
Twelfth Revised Sheet No. 26B.1
Twentieth Revised Sheet No. 26C
Sixth Revised Sheet No. 26C.1
Eleventh Revised Sheet No. 26D
Twenty-first Revised Sheet No. 163

Columbia states the sales rates set forth on Thirteenth Revised Sheet No. 26.1 reflect an increase of 15.32¢ per Dth in the commodity rate when compared with the total CDS rates reflected in Columbia's quarterly PGA filing which was filed on July 1, 1992 with a proposed effective date of August 1, 1992. In addition, the transportation rates set forth on Sixth Revised Sheet No. 26C.1 and Eleventh Revised Sheet No. 26D reflect an increase in the Fuel Charge component of 0.36¢ per Dth.

Columbia states that copies of the filing were served upon Columbia's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before August 12, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-19004 Filed 8-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-4-22-000, TM92-11-22-000]

CNG Transmission Corporation, Proposed Changes in FERC Gas Tariff

August 5, 1992.

Take notice that CNG Transmission Corporation ("CNG"), on July 31, 1992, pursuant to section 4 of the Natural Gas Act, part 154 of the Commission's Regulations, and sections 12, 15 and 16 of the General Terms and Conditions of CNG's tariff, tendered for filing the following proposed sheets for First Revised Volume No. 1 of its FERC Gas Tariff:

First Rev. Twentieth Revised Sheet No. 31
First Rev. Twelfth Revised Sheet No. 32
First Rev. Sixteenth Revised Sheet No. 34
First Rev. Eleventh Revised Sheet No. 35

CNG requests an August 1, 1992, effective date for these proposed tariff sheets.

CNG states that the purpose of this filing is to reflect significant increases in natural gas spot market prices, as well as to incorporate rate and service changes brought about by Tennessee Gas Pipeline Company's Cosmic Settlement.

CNG states that its filing would increase ACD/CD/RQ commodity rates by $0.4487 per Dt and the D-1 demand rate by $0.33 per Dt. CNG states that other sales rates will change accordingly. CNG states that its fuel charge will increase form 4.71¢ per Dt.

CNG states that copies of this filing have been mailed to CNG's customers and interested state commissions. Also, copies of this filing are available during regular business hours at CNG's main offices in Clarksburg, West Virginia.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 12, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies

of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-19005 Filed 8-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP92-153-001]

Delmarva Power and Light Company; Petition to Amend

Augst 5, 1992.

Take notice that on August 4, 1992, Delmarva Power and Light Company (Delmarva), 800 King Street, Wilmington, Delaware 19899, filed in Docket No. CP92-153-001 a petition to amend the certificate of public convenience and necessity issued June 29, 1992, in Docket No. CP92-153-000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Delmarva proposes to change the route of two segments of the 4.04 miles of 16-inch pipeline authorized by the June 29, 1992, order. Delmarva states that both segments of the pipeline to be rerouted were designed to cross the property of Sun Oil Company (Sun). The first segment is located at Market Street, Delaware County, Pennsylvania and involves 472 feet of pipeline and two new landowners, it is stated. The second segment, located on Sun property in Delaware County, Pennsylvania, would involve 900 feet of pipeline, it is stated.

Delmarva asserts that Sun has requested the relocation of the pipeline to provide for Sun's future growth and expansion.

No other changes from the original authorization are proposed.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before August 17, 1992, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Secretary.

[FR Doc. 92-19006 Filed 8-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-214-000]

El Paso Natural Gas Company; Change in Rates

August 5, 1992.

Take notice that on July 31, 1992, EL Paso Natural Gas Company ("El Paso") tendered for filing a notice of change in rates for natural gas service rendered to all customers contained in EL Paso's FERC Gas Tariff, First Revised Volume No. 1-A and Second Revised Volume No. 1 and certain rate schedules contained in EL Paso's FERC Gas Tariff, Third Revised Volume No. 2. El Paso is tendering the tariff sheets for filing and acceptance to become effective September 1, 1992.

El Paso states that based upon the test period cost of service and throughput volumes, El Paso projects a deficiency in annual revenues of approximately $116.3 million under its currently effective rates. As a consequence, El Paso is proposing to increase rates by an amount sufficient to eliminate the revenue deficiency and recover its full cost of service. El Paso states that it also has reduced the Weighted Average Cost of Gas ("WACOG") component and non-gas component of the rate for sales under the WACOG Option of Rate Schedules ABD-1 and PA-1 and has revised the rates for Contract Storage Service under Rate Schedules CSF and CSI.

El Paso states that Order No. 636, issued April 8, 1992 at Docket Nos. RM91-11-000 and RM87-34-065, among other things, mandates that pipelines recover transportation costs under the straight fixed variable ("SFV") method of assigning all fixed costs related to transportation to the reservation charge. In the notice of change in rates, El Paso has used the SFV method to classify and design rated for mainline transportation and storage function costs. El Paso states that although to this extent consistent with Order No. 636, the notice of change in rates is not intended as the vehicle to implement Order No. 636 on El Paso's system. Rather, El Paso states that it will file tariff sheets implementing Order No. 636, to the extent not already reflected in its rates and tariffs, in a compliance filing to be made in Docket No. RS92-60-000 on or before December 31, 1992.

El Paso states that copies of the notice were served upon all of El Paso's interstate transportation and sales customers and all interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 351.211 of the Commission's Rules and Regulations. ALl such motions or protests should be filed on or before August 12, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-19007 Filed 8-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TQ92-7-24-000, TA92-1-24-001]

Equitrans, Inc.; Revision to Proposed Tariff Changes

August 5, 1992.

Take notice that Equitrans, Inc. (Equitrans) on July 31, 1992, tendered for filing with the Federal Energy Regulatory Commission (Commission) the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1, to become effective September 1, 1992:

Substitute Thirty-Seventh Revised Sheet No. 10

Substitute Twenty-Seventh Sheet No. 34

Equitrans states that it submitted this filing pursuant to § 154.305(c)(4) of the Commission's PGA Regulations, 18 CFR 154.305(c)(4), in order to update its current adjustment filed with its Annual PGA on July 1, 1992. The changes proposed in this filing to the purchased gas adjustment under Rate Schedule PLS is a decrease in the commodity cost of $0.2459 per dth. The purchased gas cost adjustment to Rate Schedule ISS is a decrease of $0.1356 per dth. The GIC demand surcharge for Rate Schedule PLS is $1.0126 per dth, and is designed to recover an estimated $6,244,615 in Texas Eastern Transmission Corporation (TETCO) GIC charges.

The proposed changes reflect (1) increased Account No. 858 costs, collected under section 19.15 of

Equitrans' PGA clause of its FERC Gas Tariff, and a reconciliation charge, or exit fee, both effective July 1, 1992 on the system of Tennessee Gas Pipeline Company (Tennessee) based on implementation of Tennessee's amended "cosmic" settlement approved by Commission Orders in Docket Nos. RP88–288 *et al;* (2) increased gas costs charged by TETCO under its Rate Schedule CD–1 filed in Docket No. TQ92–7–17 on July 30, 1992 and Kentucky West Virginia Gas Company's (Kentucky) Rate Schedule PLS–1 filed in Docket No. TQ92–6–46 on July 31, 1992 both filings are to be effective on August 1, 1992; and (3) increases in the purchased gas costs of spot market purchases and Southwest supply purchases.

The increase in Tennessee's Account No. 858 costs is attributable to the conversion of Equitrans' firm sales entitlements on Tennessee's system of 65,134 dth per day to firm transportation entitlements. Tennessee's reconciliation charge is a fixed monthly demand charge of $3.62 per dth of converted contract demand, including the 65,134 dth per day converted by Equitrans, for twelve months beginning July 1, 1992.

Equitrans states that a copy of its filing has been served upon its purchases and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 12, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92–19008 Filed 8–10–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ92–12–4–000]

Granite State Gas Transmission, Inc.

August 5, 1992.

Take notice that on July 31, 1992, Granite State Gas Transmission, Inc. (Granite State), 300 Friberg Parkway, Westborough, Massachusetts 01581–5309 tendered for filing with the Commission Seventeenth Revised Sheet No. 21 in its FERC Gas Tariff, Second revised Volume No. 1, containing changes in rates for effectiveness on August 1, 1992.

According to Granite State, it is submitting this out-of-cycle purchased gas cost adjustment because its projected gas costs for the balance of the third quarter have increased substantially above the projected gas costs in its revised quarterly adjustment filing in Docket Nos. TQ92–11–4–000 and TM92–17–4–000 on July 1, 1992. Granite State further states that the current prices for its spot market purchases and the volumetric rate for its purchases from Tennessee Gas Pipeline Company (Tennessee) under Rate Schedule CD–6 have increased above the projected level of such costs reflected in its current rates.

Granite State further states that it has included the demand costs for the Rate Schedule SS–NE service it receives from Tennessee in deriving its adjusted sales rates. It is further stated that Granite State has pending a request for a temporary waiver of the purchased gas cost regulations in Docket No. RP92–197–000 to permit it to reflect the Rate Schedule SS–NE demand costs in its purchased gas accounts, until Commission action on its application for a temporary and permanent certificate in Docket No. CP92–552–000.

It is stated that the proposed rate changes are applicable to Granite State's jurisdictional sales services rendered to Bay State Gas Company and Northern Utilities, Inc. Granite State further states that copies of its filing were served upon its customers and the regulatory commissions of the States of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before August 12, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–19009 Filed 8–10–92; 8:45 am]

BILLING CODE 6717–01–M

[Project Nos. 2030–015, et al.]

Hydroelectric Applications [Portland General Electric Co., et al.]; Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1. a. Type of Application: Upgrading Transmission Line.

b. Project No.: 2030–015.

c. Date Filed: 06/08/92.

d. Applicant: Portland General Electric Co., and Confederated Tribes of the Warm Springs Reservation, Oregon.

e. Name of Project: Pelton Hydroelectric Project.

f. Location: On the Deschutes River, in Jefferson County, Oregon.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Gary W. Hackett, Portland General Electric Co., 121 S.W. Salmon Street, Portland, OR 97204, (503) 464–7545.

i. FERC Contact: Mohamad Fayyad, (202) 219–2665.

j. Comment Date: September 8, 1992.

k. Description of Amendment: Licensee proposes to let PacifiCorp rebuild and upgrade Portland General Electric's existing distribution line within project's boundaries.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

2. a. Type of Application: Transfer of License.

b. Projects Nos.: 2389–013.

c. Date Filed: April 8, 1992.

d. Applicant: Edwards Manufacturing Company, Inc. and The City of Augusta, Maine.

e. Name of Project: Augusta Project.

f. Location: On the Kennebec River in Kennebec County, Maine.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Donald H. Clark, Wilkinson, Barker, Knauer, & Quinn, 1735 New York Avenue, NW., Washington, DC 20006, (202) 783–4141.

i. FERC Contact: Robert Bell (202) 219–2806.

j. Comment Date: September 25, 1992.

k. Description of Project: License was issued to Edwards Manufacturing Company, Inc. (Licensee), to operate and

maintain the Augusta Project No. 2389. The Licensee intends to transfer the license to the Edwards Manufacturing Company, Inc. and the City of Augusta, Maine (Transferee), to facilitate the continued operation, maintenance, and relicensing of the projects. The Transferee intends to takeover the project and agrees to accept the terms and conditions as if it were the original licensee.

The Augusta Project No. 2389 is subject to the New License proceedings and the transfer will result in a substitution of the transferee for the licensee as applicant in the New License applications.

The transfer application was filed within five years of the expiration of the license for Project No. 2389, which is the subject of a pending relicensing application. In Hydroelectric Relicensing Regulations Under the Federal Power Act (54 FR 23,756; FERC Statutes and Regulations, Regulations Preambles 1986–1990 ¶ 30,854 at p. 31,437), the Commission declined to forbid all license transfers during the last five years of an existing license, and instead indicated that it would scrutizine all such transfer requests to determine if the transfer's primary purpose was to give the transferee an advantage in relicensing (*id.* at p. 31,438 n. 318). The transfer application, and the development agreement between the transferor and transferee appended to the transfer application, state that the transferee and the transferor intend to add the transferee as an applicant in the subject relicensing proceeding.

l. This notice also consists of the following standard paragraphs: B and C.

3. a. Type of Application: Amendment of License.

b. Project No.: 2655–021.

c. Date Filed: June 23, 1992.

d. Applicant: Eagle & Phenix Hydro Company, Inc.

e. Name of Project: Eagle & Phenix Mills Hydro.

f. Location: On the Chattahoochee River, in Muscogee County, Georgia and Russell County, Alabama.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r)

h. Applicant Contact: Ralph H. Walker, Jr., President, Eagle & Phenix Hydro Company, Inc., P.O. Box 512, Greenville, SC 29602, (803) 233–8567; Kathryn C. Dority, FERC Coordinator, Eagle & Phenix Hydro Company, Inc., P.O. Box 512, Greenville, SC 29602, (803) 233–8567 or (803) 244–5406.

i. FERC Contact: Regina Saizan, (202) 219–2673.

j. Comment Date: September 4, 1992.

k. Description of the Request: The licensee requests that its license be amended for the purpose of relocating the new powerhouse from its previously proposed location adjacent to the existing downstream powerhouse in the middle of the river to the west side of the dam.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

4. a. Type of Application: Amendment of License.

b. Project No.: 2713–014.

c. Date Filed: 06/25/92.

d. Applicant: Niagara Mohawk Power Corp.

e. Name of Project: Oswegatchie River Project.

f. Location: On the Oswegatchie River, in St. Lawrence County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Sam S. Hirschey, Niagara Mohawk Power Corp., 300 Erie Boulevard West, Syracuse, NY 13202, (315) 474–1511.

i. FERC Contact: Mohamad Fayyad, (202) 219–2665.

j. Comment Date: September 8, 1992.

k. Description of Amendment: Licensee proposes to install a new 60 cfs, 236–kW unit at the South Edwards minimum flow bypass. Licensee proposes to increase the minimum flow release from 40 cfs to 60 cfs.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

5. a. Type of Application: Amendment of Conduit Exemption.

b. Project No.: 4303–001.

c. Date Filed: 07/14/92.

d. Applicant: Georgetown Divide PUD (GDPUD).

e. Name of Project: Georgetown Divide PUD Conduit Hydro Project.

f. Location: On the District's Water Supply, Tunnel and Conduit System, in El Dorado County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Charles F. Gierau, Georgetown Divide PUD, P.O. Box 4240, Georgetown, CA 95634, (916) 333–4356.

i. FERC Contact: Mohamad Fayyad, (202) 219–2665.

j. Comment Date: September 12, 1992.

k. Description of Amendment: GDPUD proposes to delete two developments—Buffalo Hill and Kaiser—which have not been constructed. The exemption order issued June 30, 1981, authorized four developments: Tunnel Hill, Buckeye, Buffalo Hill, and Kaiser. Only Tunnel Hill and Buckeye were constructed and are currently operational.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

6. a. Type of Application: Transfer of License.

b. Project No.: 5946–004.

c. Date filed: June 16, 1992.

d. Applicant: Massachusetts Hydro Associates, The Commonwealth of Massachusetts for the University of Massachusetts, Lowell.

e. Name of Project: Lowell Atlantic Project.

f. Location: At Lawrence Canal, on the Lowell Canal System, adjacent to the Merrimack River, in Middlesex County, Massachusetts.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. Applicant Contact: Mr. Richard A. Norman, Massachusetts Hydro Associates, One State Street, suit 1200, Boston, Massachusetts 02109, (617) 367–0032.

i. FERC Contact: Mary Golato (202) 219–2804.

j. Comment Date: September 7, 1992.

k. Description of Project: Massachusetts Hydro Associates proposes to transfer the Lowell Atlantic Project No. 5946 to the Commonwealth of Massachusetts for the University of Massachusetts, Lowell. On December 7, 1990, the Commonwealth of Massachusetts had taken the project lands, equipment and facilities by eminent domain for the planned expansion of the University of Massachusetts at Lowell. The University plans to rehabilitate the project.

l. This notice also consists of the following standard programs: B & C.

7. a. Type of Application: Minor License.

b. Project No.: 11213–000.

c. Date filed: December 11, 1991.

d. Applicant: Thomas Hobman.

e. Name of Project: Barberville Hydroelectric Project.

f. Location: On the Poestenkill River, in Rensselaer County, New York.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. §§ 791 (a)–825(r).

h. Applicant Contact: Mr. Thomas Hohman, 4 Cloverdale Road, Wyantskill, NY, (518) 283–6326.

i. FERC Contact: Mary Golato (dt) (202) 219–2804.

j. Deadline Date: September 28, 1992.

k. Status of Environmental Analysis: This application is not ready for environmental analysis at this time—see attached paragraph D8.

l. Description of Project: The proposed project would consist of: (1) A natural forebay pool at the top of Barberville Falls; (2) a new intake structure in the forebay, including a trashrack oriented about 45 degrees to the direction of flow; (3) a new steel penstock 36 inches in diameter and about 90 feet long,

connecting the intake to a new surge tank; (4) two new steel penstocks, each 24 inches in diameter and about 225 feet long, between the surge tank and the powerhouse; (5) a new reinforced concrete powerhouse containing two generator units each rated at 150 kW and one generator unit rated at 35 kW, for a total installed capacity of 335 kW; (6) a new overhead transmission line; and (7) appurtenant facilities. The applicant intends to seek PURPA benefits.

m. Propose of Project: All project energy generated would be utilized by the applicant for sale to its customers.

n. This notice also consists of the following standard programs: A2, A9, B1, and D8.

o. Available Locations of Application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 219–1371. A copy is also available for inspection and reproduction at Mr. Thomas Hohman, 4 Cloverdale Road, Wyantskill, NY 12198 (518) 283–6326.

8. a. Type of Application: Preliminary Permit.

b. Project No.: 11303–000.

c. Date filed: June 18, 1992.

d. Applicant: Beltzville Hydro Associates.

e. Name of Project: Beltzville Project.

f. Location: On the Pohopoco Creek, in Franklin, Carbon County, Pennsylvania.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. §§ 791(a)–825(r).

h. Applicant Contact: Kenneth R. Broome, Beltzville Hydro Associates, 15 Fawn Drive, Reading, PA 19607, (215) 775–9399.

i. FERC Contact: Mary Golato (dt) (202) 219–2804.

j. Comment Date: September 28, 1992.

k. Description of Project: The proposed project would utilize the existing Corps dam and would consist of the following facilities: (1) An existing intake tower consisting of four pairs of turbine-generator units for a total capacity of 1,000 kilowatts; (2) a proposed 2-mile-long, 12-kilovolt transmission line; (3) appurtenant facilities. The average annual generation would be 4,550,500 kilowatthours. The cost of work under permit is $1,500.

l. This notice also consists of the following standard paragraphs: A3, A7, A9, A10, B, C, and D2.

9. a. Type of Application: Preliminary Permit.

b. Project No.: 11305–000.

c. Date Filed: June 29, 1992.

d. Applicant: Carrob Energy Development, Inc.

e. Name of Project: Sears Pond.

f. Location: On the east branch of the Deer River in the town, of Montague, Lewis County, New York.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Ms. Carmel A. Foltan, P.O. Box 284, North Waterboro, ME 04061, (207) 247–4938.

i. FERC Contact: Ms. Julie Bernt, (202) 219–2814.

j. Comment Date: September 25, 1992.

k. Description of Project: The proposed project would consist of: (1) The existing Sears Pond dam owned by the State of New York; (2) the existing Sears Pond with a surface area of 80 acres and a storage capacity of 500 acre-feet at elevation 1735 NGVD; (3) a proposed concrete gravity intake structure; (4) a 3-foot-diameter, 4,600-foot-long penstock; (5) a powerhouse containing one generating units with a rated capacity of 250 kW; (6) a 100-foot-long tailrace; and, (7) a 3,000-foot-long transmission line. The estimated average annual energy production of the project is 1,400 MWh and the cost of the studies performed under the permit would be $10,000.

l. Purpose of Project: The power produced would be sold to a local utility company.

m. This notice also consists of the following standard paragraphs: A3, A7, A9, A10, B, C, and D2.

Standard Paragraphs

A2. Development Application—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit will be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

B1. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the

appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "Comments", "Notice Of Intent To File Competing Application", "Competing Application", "Protest", "Motion to Intervene", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, Room 1027, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D8. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," or "COMPETING APPLICATION;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Dated: August 5, 1992, Washington, DC.

Lois D. Cashell,

Secretary.

[FR Doc. 92-18999 Filed 8-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-209-000]

Northern Natural Gas Company; Petition for Limited Waiver of Tariff Provisions

August 5, 1992.

Take notice that on July 29, 1992, Northern Natural Gas Company (Northern), petitioned the Commission for a limited waiver of Northern's FERC Gas Tariff in order to allow Northern to reannounce its Monthly Declared Price (MDP).

Northern requests waiver of section 23.5 on Sheet No. 74M of its Volume No. 1 Tariff. Such section provides that Northern shall announce its MDP at least six work days prior to the beginning of the month. Northern states that on July 24, 1992, Northern did announce an MDP of $2.76/MMBTU for August in accordance with the tariff provision, but since that time the natural gas market and the cost basis of Northern's supply has changed dramatically.

Northern states that since it announced its MDP for August, market prices have increased about 30¢ increase Northern utilized in its price announcement on July 24, 1992. Northern requests waiver of the referenced tariff provisions to allow the revised MDP of $2.90/MMBTU to be effective August 1, 1992.

Northern further states that it will file on or before July 31, 1992, an out-of-cycle quarterly PGA filing reflecting the change in the July 1, 1992 price of $2.28 to the reannounced price of $2.90 versus the originally announced price of $2.76.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 12, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-19010 Filed 8-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-229-010]

Panhandle Eastern Pipe Line Company; Compliance Filing

August 5, 1992.

Take notice that on July 31, 1992, in compliance with the Commission's order of June 1, 1992, in the above-referenced proceeding, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing the tariff sheets as listed on appendix A to the filing, to its FERC Gas Tariff, Original Volume No. 1 and Original Volume No. 2.

Panhandle states that in its Order Terminating Technical Conference Proceeding, Granting Rehearing in Part and Denying Rehearing in Part (June 1, 1992) the Commission required Panhandle to alter the functionalized cost of service underlying the rate applicable to its gathering service, and if warranted, to also reflect changes associated therewith. Additionally, in a June 1, 1992 Order on Report Filed Pursuant to Opinion No. 369 and Motion Rate and Compliance Filing the Commission required Panhandle's backhaul rate for certain specific transportation services to equal one-half the forward haul rate. Panhandle's filing reflects the functionalization of certain costs of facilities as gathering, rather than transmission, and compliance respecting the backhaul rate for certain specific transportation services.

Panhandle has included workpapers setting forth the refunctionalized cost of service resulting from the Commission's orders. Panhandle also has provided workpapers setting forth the resulting

and associated cost classification, cost allocation and rate design.

In addition to these changes, Panhandles also has reflected the results of the related Commission Order on Complaint of July 1, 1992 in Docket No. RP92-145-000. The supporting materials reflect the result of removing the costs and volumes for the transactions involving Natural Gas Clearinghouse and ONG Western, Inc. as determinants for the development of gathering rates.

Panhandle states that copies of the filing are being mailed to the customers, interested state regulatory agencies, and parties in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before August 12, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-19011 Filed 8-10-92; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Issuance of Decisions and Orders During the Week of July 6 Through July 10, 1992

During the week of July 6 through July 10, 1992, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Robert Condra, 7/8/92, LFA-0216

On June 9, 1992, Robert Condra filed an Appeal from a determination issued to him on May 24, 1992 by the Division of Human Resources Management (DHRM) of the DOE's Bonneville Power Administration (BPA). In that determination, the DHRM denied Mr. Condra's request for information filed pursuant to the Freedom of Information Act (FOAI) and the Privacy Act. Specifically, pursuant to Exemption 5 of the FOIA, the DHRM denied Mr. Condra's request for a copy of his "personal files" and other documents concerning him in the possession of the BPA. In considering the Appeal, the DOE found that the determination to withhold the requested documents was consistent with Exemption 5. However, the DOE noted that the DHRM did not address Mr. Condra's Privacy Act request and that additional documents were in the possession of the BPA. Accordingly, the DOE remanded the matter to the DHRM for consideration of the additional documents and a determination on Mr. Condra's request under the Privacy Act. The Appeal was denied in all other respects.

Refund Applications

Atlantic Richfield Company/USA Petroleum Corp., 7/7/92, FR304-9236, RF394-9237, RF304-9238

The DOE issued a Decision and Order granting a refund of $50,000 in principal plus $27,767 in accrued interest for a total of $77,767 to USA Petroleum Corporation, based upon the mid-level resellers and retailers presumption of injury established in the Atlantic Richfield Company (ARCO) proceeding. The DOE determined that the applicant was ineligible for a full volumetric refund due to the firm's inability to provide cost bank data for the entire consent order period. The DOE rejected the applicant's argument that industry-wide gross profit margin date be accepted in lieu of the firm-specific information required by the ARCO refund procedures.

Dole Fresh Fruit Company, 7/9/92, RF272-27811, RD272-27811

The DOE issued a Decision and Order granting an Application for Refund filed by Dole Fresh Fruit Company, a producer of fresh fruits, in the subpart V crude oil refund proceeding. A group of States and Territories (States) objected to the application on the grounds that the applicant was able to pass through increased petroleum costs to its customers. The States asserted that Dole enjoyed increased revenues, earnings, profits and dividends during the refund period, and that increased input costs were offset by corresponding increases in prices. In addition, the States cited a study finding that firms in the food industry passed on higher input costs in the form of higher prices to consumers and that the industry was able to increase output in response to price increases. Finally, the States submitted an affidavit of a consulting economist stating that because the demand for food is likely to be inelastic, it is very likely that firms in this industry would have been able to pass on a very high percentage of increased energy costs to customers. The DOE determined that the evidence offered by the States was insufficient to rebut the presumption of end-user injury and that the applicant should receive a refund. The DOE also denied the States' Motion for Discovery, finding that discovery was not warranted where the States had not presented evidence sufficient to rebut the applicant's presumption of injury. The refund granted to the applicant in this Decision was $111,458.

Texaco Inc./General Gas & Oil Company, 7/6/92, RF321-11812, RF321-13673

The DOE issued a Decision and Order in the Texaco Inc. refund proceeding concerning two Applications for Refund that were filed with respect to purchases made by General Gas & Oil Company, a corporation that was a distributor of Texaco products. One application was filed by Milton and Gertrude Lambert, the former owners of the firm who claimed the refund because the subsequent owner, Brian Flisk, owed them a substantial amount of the purchase price. The other application was filed by General and asked that the refund be paid to Capitol Bank, a creditor of the firm. The DOE noted that, generally, where the purchases were made by a corporation, the right to the refund remains with the corporation. The DOE found that the Lamberts did not retain any right to the refund upon their sale of the shares of the corporation and that their dispute between them and Flisk over payment of the purchase price did not affect the corporation's right to the refund. The DOE determined that General was entitled to the refund. Capitol Bank's claim was based upon a security agreement that gave it a security interest in General's accounts receivable. However, the DOE noted that refunds are not accounts receivable. Accordingly, the DOE found that the payment should be made payable General, since the bank had not demonstrated a clear right to the refund.

Texco Inc./Stewart's Texaco, 7/10/92, RF321-112, RF321-18816

On July 10, 1992, the Office of Hearings and Appeals (OHA) of the Department of Energy issued a Decision and Order concerning a Motion for Reconsideration that was filed by Edward Stewart. In the Motion, Mr. Stewart requested that we reconsider an earlier determination that divided the refund for Stewart's Texaco equally between Mr. Stewart and his former wife. In the Decision, the OHA determined that although the right to a

refund for purchases made by Stewart's Texaco during the course of the Stewart's marriage was community property, it was awarded in its entirety to Mr. Stewart pursuant to the terms of the Stewarts' divorce decree. The OHA therefore concluded that the partial refund granted to Ms. Stewart should be rescinded, and that an additional refund of $675 should be granted to Mr. Stewart.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Company/Clyde Melton Inc. *et al*	RF304–12649	07/08/92
Atlantic Richfield Company/The Car Wash, Great West Car Wash	RF304–9228 RF304–9232	07/09/92
Big Rivers Electric Corp., Sikeston Board of Municipalutilities	RF272–66518 RF272–67097	07/06/92
Gulf Oil Corporation/Anderson Gulf *et al*	RFRF300–17242	07/06/92
Gulf Oil Corporation/Burch Oil Company, Inc., Rupp Oil Company, Inc., Standish Oil Company	RR330–51 RR300–158 RR300–164	07/06/92
Gulf Oil Corporation/Hendrix Gulf Station *et al*	RF300–17000	07/07/92
Gulf Oil Corporation/Marion County Sheriff *et al*	RF300–13321	07/07/92
Gulf Oil Corporation/Suburban Gulf *et al*	RF300–17202	07/07/92
James C. Lansdowne, James C. Lansdowne, Conagra Poultry Company, Conagra Poultry Company	RF272–28359 RD272–28359 RF27228455 RD272–28455	07/09/92
Reinauer Petroleum Co./West Paterson Quik Stop	RF341–17	07/08/92
Tesoro Petroleum Corporation/Lowell's Service Station, Vanguard Petroleum Corp.	RF326–308	RF326–325 07/08/92
Texaco Inc./Ayers Village Texaco *et al*	RF321–5087	07/07/92
Texaco Inc./Elmer's Texaco *et al*	RF321–9917	07/07/92
Texaco Inc./Gail Melton Texaco S.S. *et al*	RF321–10256	07/07/92
Texaco Inc./Mike's Texaco *et al*	RF321–11705	07/08/92
Transpo International, Inc., Transpo International, Inc.	RF272–38138 RD272–38138	07/07/92

Dismissals

The following submissions were dismissed:

Name	Case No.
Albertson Service Center	RF321–18693
Cloverleaf Texaco	RF321–13719
Cote's Texaco #1	RF321–14652
Cote's Texaco #1	RF321–14652
Country Club Hills Sch. Dist. 160	RF272–81384
David K. Cox	LFA–0219
E.C. Wilson Texaco	RF321–1947
Fort Washington Car Wash	RF304–1142
Fort Washington Car Wash	RF304–1359
Fort Washington Enterprises I	RF304–1248
Goodman Arco	RF304–3719
Hamlet Texaco	RF321–18513
Helena Flats Elementary	RF272–88163
Hilton-Davis Chemical Co.	RF321–16492
Katonah Lewisboro U. F. S.	RF272–80327
Kensett School District	RF272–78859
L & L Texaco	RF321–1663
Nueces Vacuum Service, Inc.	RF321–18694
R & W Gas Co., Inc.	RF321–1752
Teer Plating Co., Inc.	RF321–18695
Tesoro Petroleum Distribution Co.	RF333–10

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings an Appeals, room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except Federal holiday. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reported system.

Dated August 5, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 92–19087 File 8–10–92; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4193–7]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et.seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATE: Comments must be submitted on or before September 10, 1992

For further information or to obtain a copy of this ICR contact Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: Reporting and Recordkeeping Requirements for the New Source Performance Standards (NSPS) Subpart N, Na for Iron and Steel Plants (Basic Oxygen Processing Furnaces) (ICR 1069.04; OMB No. 2060–0029).

Abstract: This ICR is for an extension of an existing information collection in support of the Clear Air Act, as described under the general NSPS at 40 CFR 60.7–60.8, and the specific NSPS for particulate matter (PM) emissions from the Basic Oxygen Processing Furnace (BOPF) at 40 CFR 60.14 and at 40 CFR 60.140. The information will be used by the EPA to direct monitoring, inspection, and enforcement efforts, thereby ensuring compliance with the NSPS.

Owners and operators of affected facilities must provide EPA with: (1) Notification of construction,

reconstruction, or modification; (2) anticipated and actual dates of facility startup; (3) initial performance test data and results; and (4) notification of any physical or operational change to a facility which could increase the PM emission rate. Those existing facilities that deviate from the emissions standards set forth in Subparts N and Na must submit semiannual excess emission reports and monitoring systems performance reports.

All affected facilities must maintain records on the facility operation that document: (1) The occurrence and duration of any start-ups, shutdowns, and malfunctions; (2) the time and duration of each steel production cycle and exhaust gas diversion from the main stack; and (3) pressure loss, opacity, and exhaust flow rate data.

Presently there are 14 facilities subject to the regulation with an estimated annual growth of 0.6 facilities over the next three years. All subject facilities must maintain records related to complaince for two years.

Burden Statement: Public reporting burden for facilities subject to this collection of information is estimated to average 19.3 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining data, and completing and reviewing the collection of information. Public recordkeeping burden is estimated to average 91.3 hours annually.

Respondents: Owners or operators of subject basic oxygen processing furnaces that have undergone construction, reconstruction, or modification after January 20, 1983.

Estimated Number of Respondents: 7 reporters, 14 recordkeepers.

Estimated Number of Responses per Respondent: 2.

Estimated Total Annual Burden on Respondents: 1547 hours.

Frequency of Collection One-time notifications for new facilities; semiannual reporting, as appropriate, for existing facilities.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460 and

Chris Woz, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th St. NW., Washington, DC 20503.

Dated: August 4, 1992.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 92–19064 Filed 8–10–92; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4193–8]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 10, 1992. For further information, or to obtain a copy of this ICR, contact: Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: Survey of Consumer and Commercial Product Manufacturers under section 183(e) of the Clean Air Act (EPA ICR #1621.01). This is a request for approval of a new information collection.

Abstract: EPA proposes to conduct a census survey of the manufacturers of consumer and commercial products in order to develop an inventory of volatile organic compounds (VOC's) emitted from these products. The results of the survey will be used to develop baseline estimates of VOC emissions from consumer and commercial products. These estimates and other information pertaining to consumer and commercial products will be documented in a report to Congress required under Section 183(e) of the Clean Air Act. The baseline estimates will also be used to develop the regulatory agenda required under Section 183(e).

The affected industry has been closely involved in the developed of the survey questionnaire for the proposed information collection. Respondents will be asked to provide EPA with the 1990 sales (in pounds) and the VOC content (in weight percent) of each product produced or marketed, as well as the individual VOC ingredients. Respondents will have the option of using personal-computer-based software for direct data entry and quality assurance monitoring.

Burden Statement: The public reporting burden for this collection of information is a one-time response estimated to average 11 hours for a 1-product company, 31.5 hours for a 10-product company, and 144.5 hours for a 100-product company. These estimates include the time needed to review instructions, search existing data sources, gather the data needed and review the collection of information.

Respondents: Manufacturers of consumer and commercial products that emit volatile organic compounds.

Estimated No. of Respondents: 5,000.

Estimated No. of Responses per Respondent: One.

Estimated Total Burden on Respondents: 316,750 hours.

Frequency of Collection: Once.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460 and

Chris Wolz, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

August 4, 1992.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 92–19063 Filed 8–10–92; 8:45 am]

BILLING CODE 6560–50–M

(FRL–4193–6)

Approval of Prevention of Significant Air Quality Deterioration (PSD) Permit to RMC Lonestar (EPA Project Number NCC 86–01)

AGENCY: Environmental Protection Agency (EPA), Region 9.

ACTION: Notice.

SUMMARY: Notice is hereby given that on July 31, 1991, the Environmental Protection Agency issued a PSD permit under EPA's federal regulations 40 CFR 52.21 to the applicant named above. The PSD permit grants approval to RMC Lonestar to increase SO_2 emissions at their Davenport portland cement plant and rescinds the NO_x portions of their existing PSD permit. The permit is subject to certain conditions, including an allowable emission rate as follows: 40 lb/hr (2-hr average) or TSP from the main stack, 250 lb/hr (24-hr running

average) or 300 lb/hr (2-hr running average) of SO_2 from the main stack.

FOR FURTHER INFORMATION CONTACT: Copies of the permit are available for public inspection upon request: address request to: Linda Barajas (A–5–1), U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–1244, FTS (415) 744–1244.

SUPPLEMENTARY INFORMATION: Best Available Control Technology (BACT) requirements include: an alkaline slurry injection system for control of SO_2 emissions to be operated at all times the raw mill is not operating.

The PSD permit is reviewable under Section 307(b)(1) of the Clean Air Act only in the Ninth Circuit Court of Appeals. A petition for review must be filed by 60 days after publication in the **Federal Register.**

David P. Howekamp,

Director Air and Toxics Division Region 9.

Dated: July 28, 1992.

[FR Doc. 92–19065 Filed 8–10–92; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4192–1]

Reallotment of Funds Under Municipal Wastewater Treatment Works Construction Grants Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of distribution of funds for reallotment under Municipal Wastewater Treatment Works Construction Grants program.

SUMMARY: This notice announces the distribution of unobligated fiscal year (FY) 1990 funds subject to reallotment after September 30, 1991, under the Clean Water Act (CWA), 33 U.S.C. 1285 *et seq.* and explains the reallotment and distribution procedures.

The construction grants program operates under authority of the CWA Public Law No. 92–500, as amended. Section 205(d) of the Act requires that funds allotted to a State which have not been obligated by the end of the second year of availability shall be immediately reallotted by the Administrator. Section 104(q)(4) of the CWA requires that notwithstanding section 205(d) the Administrator shall make available $1,000,000 or such unobligated amount, whichever is less, to support a national clearinghouse to disseminate information on innovative and alternative wastewater treatment processes for communities.

FOR FURTHER INFORMATION CONTACT: Mr. Leonard Fitch, Program Management Branch, Municipal Support Division, Office of Wastewater Enforcement and Compliance (202) 260–5858.

SUPPLEMENTARY INFORMATION: Section 104(q)(4) requires the Administrator to make available to the National Small Flows Clearinghouse (NSFC), notwithstanding the reallotment provisions of section 205(d), from unobligated funds reserved for innovative and alternative projects under section 205(i), an amount equal to those unobligated funds or $1,000,000, whichever is less. Pursuant to section 202(a)(2) a portion of construction grants funds were set aside to increase the Federal share of grants for construction of treatment plants using innovative or alternative wastewater treatment processes.

For the fiscal year 1992 reallotment, the States have obligated all of their fiscal year 1990 funds except for an amount of section 205(i) set-asides totalling $88,568. This fiscal year these set-asides will be reallotted from two territories and the District of Columbia. The total amount of $88,568 is comprised of Puerto Rico ($62,533); Virgin Islands ($2,498); and the District of Columbia ($23,537).

In fiscal year 1990 there were both State Revolving Fund (SRF) and construction grant funds available. States with SRF programs had the option of transferring all of their construction grants including set-asides to their SRFs. But because the District of Columbia and the Virgin Islands are not required to establish SRF programs, they did not have an SRF in which to transfer their 205(i) funds. This was not the case for Puerto Rico which has an SRF program. Puerto Rico had proposed an innovative portion of a project that at the end of the fiscal year did not qualify for innovative funding, resulting in the loss of funds. Because the determination of the innovative portion occurred very close to the end of the fiscal year, Puerto Rico did not have time to transfer the funds into its SRF program. The Northern Mariana Island (NMI) ($611,300) do not lose funds to reallotment due to an exception.

Unavailability of Funds for Reallotment to States

The total balance of the unobligated funds remaining after the period of availability and subject to reallotment under section 104(q)(4), is $88,568 which is less than the maximum of $1,000,000 that can be made available to fund the NSFC. This is the second year in which funds will only by available for distribution to the NSFC and no funds are available for reallotment to the States under section 205(d).

Dated: July 29, 1992

William K. Reilly,

Administrator.

[FR Doc. 92–19062 Filed 8–10–92; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4194–1]

Public Notice; Review of Lake Michigan Lakewide Management Plan

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: The United States Environmental Protection Agency (EPA or Agency) has prepared a proposed lakewide management plan (LaMP) for Lake Michigan as required by the Great Lakes Critical Programs Act of 1990. Based on current information, the Lake Michigan LaMP describes the pollutants impacting Lake Michigan on a lakewide basis and inform as the public of the variety of actions that Federal, State, Tribal, and local governments and private organizations are taking, will take, or could take to reduce the amount of these pollutants entering Lake Michigan. Due to its length and format, the Lake Michigan LaMP is summarized in this notice, rather than published in full. As described in this notice, EPA is making copies of the entire Lake Michigan LaMP available to the public. Furthermore, EPA is soliciting comments on all aspects of the proposed LaMP. In particular, EPA seeks comments regarding the proposed list of Critical Pollutants for Lake Michigan and the actions available to Federal, State, and local agencies, as well as the public, to reduce the release of Critical Pollutants [1] from all sources and the presence of these substances in the Lake Michigan ecosystem. Nothing in the proposed LaMP constitutes a final Agency action or decision.

DATES: Comments must be submitted on or before December 9, 1992.

ADDRESSES: To obtain a copy of the Lake Michigan LaMP or to provide oral

[1] "Critical pollutants" are defined by Annex 2 of the Great Lakes Water Quality Agreement as substances that persist at levels that, singly or in synergistic or additive combination, are causing, or are likely to cause, impairment of beneficial uses despite past application of regulatory controls due to their: (1) Presence in open lake waters; (2) ability to cause or contribute to a failure to meet Agreement objectives through their recognized threat to human health and aquatic life; or (3) ability to bioaccumulate (i.e., collect in the tissues of aquatic life, wildlife, and humans to concentrations much higher than those in the lake water).

or written comments, please contact Jeanette Morris-Collins, Environmental Protection Assistant, U.S. Environmental Protection Agency—Region 5 (WQ-16J), 77 West Jackson, Chicago, Illinois 60604, 312/886-0152. Copies of the proposed Lake Michigan LaMP may also be obtained from the following offices:

Illinois Environmental Protection Agency, Attn: Bob Schacht, 1701 S. First Avenue, suite 600, Maywood, Illinois 60153, 708/531-5900.

Indiana Department of Environmental Management, Attn: David Dabertin, Gainer Bank Building, 504 N. Broadway, suite 418, Gary, Indiana 46402, 219/881-6712.

Michigan Department of Natural Resources, Attn: Robert Day, P.O. Box 30028, Lansing, Michigan 48909, 517/335-3314.

Water Resources Management, Wisconsin Department of Natural Resources, 101 S. Webster Street, P.O. Box 7921, Madison, Wisconsin 53707, 608/266-9238.

Lake Michigan Federation, 59 E. Van Buren Street, suite 2215, Chicago, Illinois 60605, 312/939-0838.

Lake Michigan Federation, 1270 Main Street, Green Bay, Wisconsin 54302, 414/432-5253.

Lake Michigan Federation, 647 W. Virginia, Milwaukee, Wisconsin 53204, 414/271-5059.

Lake Michigan Federation, 425 Western Avenue, suite 201, Muskegon, Michigan 49440, 616/722-5116.

The LaMP document will also be available for review at public libraries throughout the Lake Michigan basin.

FOR FURTHER INFORMATION CONTACT: Constance Hunt, Region V LaMP Coordinator, 312/886-0271.

SUPPLEMENTARY INFORMATION: This notice of availability of the proposed Lake Michigan LaMP and period of public review is provided in accordance with Section 118(c)(4)(A) of the Federal Water Pollution Control Act (33 U.S.C. 1268) as amended by Section 101 of the Great Lakes Critical Programs Act of 1990. Annex 2, section 6 of the Great Lakes Water Quality Agreement (GLWQA or Agreement), as amended by Protocol on November 18, 1987, calls for the development of a LaMP for Critical Pollutants for each of the Great Lakes. The purpose of a LaMP is to reduce loadings of Critical Pollutants from all sources, including point and non-point sources, in order to restore beneficial uses of the open lake waters.

Participation

The development and implementation of a LaMP for Lake Michigan is an enormous undertaking in terms of the technical complexity of the issues, the geographic area involved, and the extensive coordination needed at the Federal, State, Tribal and local level and with the public. As a result, EPA is developing the LaMP with full participation by all interested parties.

To assist in Lake Michigan LaMP development and implementation, EPA has convened a Management Committee with representatives from the Fish and Wildlife Service, the Forest Service, the Army Corps of Engineers, the Geological Survey, the Soil Conservation Service, representatives of Lake Michigan basin Tribes, and the States of Illinois, Indiana, Michigan and Wisconsin. The purposes of the Management Committee are to: (1) Ensure public participation in the LaMP process; (2) identify the necessary participants and convene ad hoc technical committees to develop options and recommendations for reducing loads of Critical Pollutants; (3) develop policies, commit resources, and review the LaMP prior to public notice and submittal to the International Joint Commission; and (4) work through the respective agencies' budget processes to secure the resources necessary to develop and fully implement the LaMP.

Public participation in the development and implementation of the Lake Michigan LaMP will be accomplished though three tiers of activity: (1) General public education through workshops, public presentations, and the distribution of fact sheets (a general education program focussing on Lake Michigan water quality is being developed in conjunction with the Lake Michigan LaMP by the Great Lakes Sea Grant Program under the National Oceanic and Atmospheric Administration); (2) formal public notices to provide the opportunity for broad public review of the LaMP and progress on its implementation on a periodic basis; and (3) formation of a forum to solicit advice from interested parties in the Lake Michigan basin. The forum will provide a mechanism for individual comments by constituent groups, and is not intended to provide consensus recommendations or advice. This forum consists of representatives from a broad spectrum of Lake Michigan interests and reflects the concerns of large segments of the basin population. The forum representatives will be given the opportunity to observe and participate in both Management Committee and technical-level committee meetings. the forum members may review and comment on recommendations and documents developed for the LaMP. The forum does not substitute for the public process. Representatives to the forum are expected to inform their constituencies of activities carried out under the LaMP program and to provide the Management Committee with their constituencies' views and concerns on those activities. EPA has invited the following organizations to participate on the Lake Michigan forum:

- Great Lakes Sportfishing Council
- Great Lakes Association of Counties
- Council of Great Lakes Governors
- American Metropolitan Sewerage Agencies
- Lake Michigan Federation
- National Wildlife Federation
- Northwest Indiana Forum
- Grand Cal Task Force
- Chemical Manufacturers Association
- Council of Great Lakes Industries
- Great Lakes United
- Greenpeace Action
- National Association of Metal Finishers
- American Paper Institute
- Illinois Farm Bureau
- Lake Carriers Association
- National Association of Conservation Districts
- West Michigan Environmental Action Council
- Michigan Manufacturing Association
- Michigan State Chamber of Commerce
- Motor Vehicle Manufacturers Association of the United States
- League of Women Voters of Indiana
- Atlantic States Legal Foundation
- Center for the Great Lakes
- American Farm Bureau Association

Process

The Lakewide Management Plan for Lake Michigan embodies a process for implementing an ecosystem-focussed approach to environmental protection. The process consists of the following steps: assessment of environmental problems or impairments in the Lake Michigan ecosystem, translation of the problem statements into a set of goals that a coalition of agencies and non-government organizations can work together to achieve, adoption of a set of criteria and indicators by which to gauge progress towards achievement of the goals, development and implementation of action plans to move towards achievement of the goals, and monitoring of the environmental criteria and indicators in order to evaluate progress towards achievement of the goals and to detect emerging problems. Based on the information fed back and the environment via the monitoring programs, the process and action plans are adjusted as necessary to ensure continued progress.

The LaMP serves as a coordination and prioritization mechanism for ongoing programs and activities. Where

regulatory programs exist, the LaMP process helps agencies to identify areas where efficiency and effectiveness can be improved through coordination and information sharing. Where no regulatory program exists to address problems of importance to the health of the Lake Michigan ecosystem, the LaMP program will help to identify opportunities for voluntary activities and technical assistance to reduce risk. Thus, the LaMP process provides a vehicle for plugging gaps in systems to protect the environment. The LaMP provides a context within which to assess the degree of risk posed to the health of the Lake Michigan ecosystem by one cause of impairments relative to other causes. In taking a holistic approach to pollution reduction, the LaMP allows agencies to weigh risks and opportunities for success in deciding where pollution reduction and prevention dollars should be targeted.

As required by the Critical Programs Act, EPA will prepare a revised LaMP document for review by the International Joint Commission by January 1, 1993. That draft will be more complete than the current proposal and address gaps identified in the present draft. It will also be made available for public comment thereby representing a reproposal of the LaMP.

Environmental Goals

EPA proposes to work in cooperation with other Federal, State, Tribal and local agencies, with the public, and with the regulated community to direct existing programs and establish new programs as necessary to accomplish two primary environmental goals. The first goal is to achieve specific reductions in the release and deposition of Critical Pollutants into the Lake Michigan ecosystem on established time tables, and to isolate, treat, and/or remove sediments contaminated by Critical Pollutants, so that: (1) the Lake's water quality and sediments are capable of sustaining communities to sensitive living resources (aquatic and terrestrial); and (2) the health risks posed to humans and wildlife in drinking Lake water or consuming lake fish and wildlife are minimal. The second goal is to virtually eliminate the release of persistent, toxic, and/or bioaccumulative pollutants within the Lake Michigan basin in order to prevent any further degradation of Lake Michigan and to avoid costly remedial actions in the future.

EPA requests specific comments on the appropriateness, scope, and definition of these environmental goals.

Critical Pollutants

EPA proposes that pollutants exceeding State or Federal water quality standards and/or criteria, or exceeding FDA action levels in Lake Michigan fish, and judged by EPA and the LaMP Management Committee as impairing beneficial uses as defined in the GLWQA, Annex 2 (1)(c), and having lakewide implications, be designated Critical Pollutants. In addition, any pollutant which EPA and the LaMP Management Committee have judged to be strongly associated with beneficial use impairment on a lakewide (i.e. greater than local) basis will be designated a Critical Pollutant.

The strength of association between the presence of a pollutant in the environment and evidence of impairments varies greatly, depending on the complexity of the problem and the degree to which the problem has been studied both in the environment and in laboratories. EPA therefore proposes that Critical Pollutant designations be tiered along a spectrum related to the degree of association with use impairments and that management activities undertaken in accordance with the LaMP program be tiered in a similar manner. For example, where a strong degree of association [2] exists between a pollutant and an ecological impairment, management actions should be focussed towards removing that pollutant from the ecosystem. Where a weak degree of association exists, management actions should be focussed on further evaluation of the cause/effect relationship. In cases of weak degrees of association, the LaMP program should also encourage and provide incentives for activities geared towards reducing concentrations of the subject pollutants, such as pollution prevention programs, to ensure that the pollutants do not become causes of impairment. The proportion of human and financial resources within the LaMP program to be dedicated towards addressing any given pollutant should be determined by the strength of association with use impairments, severity of the perceived problem, geographic distribution of the perceived problem, and potential for success.

[2] The Council of Great Lakes Research Managers has adopted the following criteria for inferring causality:

(a) time order;
(b) strength of association;
(c) specificity;
(d) consistency on replication;
(e) coherence; and
(f) predictive performance.

EPA recommends that these criteria be considered in the evaluation of a pollutant for inclusion on the LaMP Critical Pollutant list.

EPA proposes that the Critical Pollutant list for the Lake Michigan LaMP be based primarily on environmental data. The list should also have the effect of catalyzing management activities based on the availability of data and strength of association between the presence of pollutants and documentation of ecosystem impairments, and be dynamic in nature so that as the risk to the ecosystem is diminished by reductions in pollutant concentrations, the pollutants may be removed from the Critical Pollutant list, and other pollutants may be added as the strength of association with use impairments increases.

Based on an interagency meeting of the Lake Michigan ad hoc work group on Critical Pollutants, EPA proposes that the listing system contain four levels. Levels I and II list those pollutants which are considered to be Critical Pollutants necessitating immediate LaMP action. These pollutants are considered to be Critical Pollutants because (1) they exceed the most stringent State water quality standards and/or criteria, or exceed FDA action levels in Lake Michigan fish, and have been judged by EPA and the LaMP Management Committee as impairing ecological functions and having lakewide implications, or (2) the pollutants are strongly associated with ecological impairments, including unacceptable risks to humans or non-aquatic wildlife, in Lake Michigan. Only those pollutants listed in Levels I and II are considered to be Critical Pollutants.

Levels III and IV list pollutants which, although not presently considered to be Critical Pollutants, may in the future be listed as Critical Pollutants. Level III lists those pollutants for which a moderate body of evidence has been established and for which the LaMP will act as a forum to encourage load reductions as additional information is being established regarding the severity of ecological impacts associated with Level III pollutants. These activities will focus on finding load reduction and pollution prevention opportunities for specific pollutants on the Level III list; i.e., such activities will be pollutant-focused. Level IV consists of those pollutants present in the Lake Michigan basin which have characteristics that indicate they may cause impairments, but for which no substantial evidence linking them with impairments in the Lake Michigan basin exists. More evidence demonstrating that these pollutants are posing risks to the ecological integrity of Lake Michigan must be established before the LaMP

process addresses each pollutant individually. While information is being developed, however, EPA will encourage the development of pollution prevention activities for *any* of the pollutants on the Level IV list; i.e., an opportunity-focused approach will be taken.

Although the level of effort dedicated by the LaMP process to problems associated with particular pollutants will be dictated largely by the tiering system, EPA and the LaMP Management Committee will have to prioritize activities even within the proposed levels. This prioritization will be based on the potential for significantly reducing risk by focusing on a load reductions of a given pollutant, and on the perceived severity of the risk posed by each pollutant.

Based on the available information regarding the pollution of Lake Michigan and the effects or potential effects of the pollutants on acquatic life, wildlife, and humans, EPA is proposing the following pollutants as Critical Pollutants (Level I and II) for Lake Michigan: total polychlorinated biphenyls (PCBs), dieldrin, chlordane, DDT and degradation products (DDD and DDE isomers), polychlorinated dibenzo-para-dioxins (dioxins), and mercury. Proposed pollutants for Levels III and IV include polychlorinated dibenzofurans (furans), hexachlorobenzene, toxaphene, polycyclic aromatic hydrocarbons (PAHs), lead, copper, zinc, selenium, cadmium, and chromium.

The Lake Michigan LaMP calls for the LaMP Management Committee to annually review available scientific information, source monitoring data, and ambient fish tissue, sediment, and water monitoring data for the purpose of assisting in the revision of the critical pollutant (i.e., adding to and/or deleting chemicals from the list) as new information becomes available. EPA proposes to continue the development and implementation of a monitoring program to detect bioconcentratable substances in fish tissue, sediments and wastewater discharges to detect chemicals that are entering Lake Michigan but that, heretofore, may have gone undetected. EPA views the listing of Critical Pollutants for Lake Michigan as a dynamic, flexible process which must accommodate the availability of new information.

EPA requests specific comments on its proposal to designate the substances listed above as Critical Pollutants and Level III and IV pollutants for Lake Michigan and the process for revising the list. EPA requests proposals for pollutants other than those listed above to be added to the Critical Pollutant and Level III and IV pollutants lists. EPA further requests that any information concerning the concentration of a substance in the water or sediments of Lake Michigan, or in the tissues of the acquatic life, wildlife, or humans that are dependent on Lake Michigan for food or water, which suggests that a substance should be considered a critical pollutant for Lake Michigan, be provided to the Agency during the comment period. In addition, EPA requests any additional information on sources and release rates on these and any other substances that may persist in the environment and cause deleterious effects on the Lake Michigan ecosystem.

Development of Criteria and Indicators

The development of chemical criteria and ecosystem indicators is essential for the Lake Michigan LaMP to demonstrate success. The ambient criteria—i.e. specific concentrations of pollutants in biota, sediments, or the water column—will serve as indicators of progress towards chemical integrity. Biological indicators are likely to consist of statistics related to species compositions and fitness; e.g. invertebrate and fish populations in tributaries and harbors, reproductive success in small, fish-eating birds.

EPA anticipates that the criteria generated by the Great Lakes Water Quality Initiative (Initiative) will provide criteria in the form of chemical concentrations. The LaMP will rely on them as interim goals for all pollutant sources discharging or emitting Critical Pollutants or Level III and IV pollutants into the Lake Michigan drainage basin. The ultimate goal of the Great Lakes Water Quality Agreement is the virtual elimination of persistent toxic substances from the Great Lakes basin ecosystem.

Source Identification and Release of Critical Pollutants

The proposed Critical Pollutants identified above are toxic at very low concentrations. Monitoring for the above substances has proven difficult because of the specialized and expensive techniques required for sampling and analysis. As a result, sampling of these substances at the source and in the environment has been sporadic and not comprehensive. Therefore, little information is available on the sources or the rate of loading of the proposed pollutants into Lake Michigan.

To address this deficiency, EPA in cooperation with other Federal and State agencies, is investing in increased monitoring for toxic substances both at the source and in the environment. Beginning during the spring of 1992, toxic chemicals will be monitored in both wet and dry deposition from the atmosphere, in the major tributaries to Lake Michigan, and in the open lake waters. In addition, EPA is currently reviewing all available information and developing a general mass balance model to estimate the total loads of the proposed Critical Pollutants to Lake Michigan. These estimates will be available by April of 1992.

EPA, the States and local authorities have accelerated activities to identify sources of the proposed Critical Pollutants to Lake Michigan and to initiate load reduction activities. To further this effort, the proposed Lake Michigan LaMP recommends that EPA and the States:

- Develop total maximum daily loads/wasteload allocations/load allocations for tributaries and near shore areas impacted by Critical Pollutants on a priority basis;
- Monitor and take enforcement actions against any point source wastewater discharge that is releasing a critical pollutant in violation of permit limits, monitoring requirements, or the conditions necessary for control;
- Review storm water information available or to be submitted by industrial and municipal facilities to identify the presence of Critical Pollutants and to expeditiously issue permits ensuring that appropriate treatment or management practices are implemented to reduce loads;
- Ensure that Publicly Owned Treatment Works suspected of releasing Critical Pollutants have conducted user inventories to identify sources and implement load reduction actions through controls, treatment, or pretreatment;
- Inventory air sources of Critical Pollutants and initiate the early load reduction provisions under the Clean Air Act;
- Inventory contaminated sediments within the Lake Michigan basin and prioritize and target for remedial action those sites contaminated with Critical Pollutants;
- Target tributaries to Lake Michigan identified in State non-point source management plans and assessments with significant non-point sources of Critical Pollutants and initiate the installation of best management practices;

• Initiate a state-sponsored, basin-wide "clean sweep" program to collect and safely dispose of existing stocks of Critical Pollutants, with an emphasis on canceled, suspended, or restricted-use pesticides;

• Identify and close or eliminate the discharge of Critical Pollutants to Class V underground injection wells within the basin. These wells are the most likely to contaminate surface waters within the basin;

• Inventory those treatment, storage, or disposal facilities regulated under the Resource Conservation and Recovery Act (RCRA) and National Priorities List sites regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) that are likely to contribute toxic pollutants to major tributaries or directly to the Lake;

• Accelerate closure and clean-up at any RCRA or CERCLA site with off-site transfers of Critical Pollutants to surface waters of the Lake Michigan basin;

• Coordinate with ongoing Remedial Action Planning activities in the Lake Michigan Areas of Concern to ensure that Critical Pollutant sources are identified and load reduction activities undertaken; and

• Initiate voluntary pollution prevention projects with key municipal and industrial facilities to reduce or eliminate the release of persistent, toxic substances.

EPA requests public comment on the scope, adequacy, and timing of the actions described in the Lake Michigan LaMP. In particular, EPA requests that persons with knowledge of any sources or ongoing releases of Critical Pollutants to surface waters within the Lake Michigan basin provide this information during the public comment period.

In accordance with the Critical Programs Act of 1990, the proposed Lake Michigan LaMP will be revised following the public comment period to incorporate the comments received. On January 1, 1993, the revised LaMP document will be submitted to the International Joint Commission for review. Although not specifically required by the Critical Programs Act, EPA will also take public comment on revised LaMP document. On January 1, 1994, a final LaMP document will be published in the **Federal Register.**

Dated: July 31, 1992.

William K. Reilly,

Administrator.

[FR Doc. 92–19058 Filed 8–10–92; 8:45 am]

BILLING CODE 6560–01–M

[FRL–4193–9]

Proposed Settlement Under Section 122(g) of the Comprehensive Environmental Response, Compensation and Liability Act; Acme Printing Ink Company, et al.

AGENCY: U.S. Environmental Protection Agency.

ACTION: Request for public comment.

SUMMARY: Notice of *De Minimis* Settlement: In accordance with section 122(i)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA) notice is hereby given of a proposed administrative settlement concerning the first operable unit at the Organic Chemicals, Inc. site in Grandville, Kent County, Michigan. the agreement was proposed by EPA Region V on February 13, 1992. Subject on review by the public pursuant to this Notice, the agreement was approved by the United States Department of Justice on June 26, 1992.

DATES: Comments must be provided on or before September 10, 1992.

ADDRESSES: Comments should be addressed to the Docket Clerk, U.S. Environmental Protection Agency, Region, V, 77 West Jackson Boulevard, Chicago, Illinois, 60604–3590, and should refer to: In Re Organic chemicals, Inc., Site in Grandville, Michigan, U.S. EPA Docket No. V–W–92–C–149.

FOR FURTHER INFORMATION CONTACT: James Morris, U.S. Environmental Protection Agency, Office of Regional Counsel, CS–3T, 77 West Jackson Boulevard, Chicago, Illinois, 60604–3590, 312/886–6632.

SUPPLEMENTARY INFORMATION: Below are listed the parties who have executed binding certifications of their consent to participate in the settlement: INX International Ink Company for Acme Printing Ink Company; Acorn Building Components for Acolor Company; AFCO Industries, Inc.; American Seating; Metal Components, Inc.—Flexible Furniture Division; Apex Rack & Coating Co.; Applied Arts; Ashland Chemical, Inc.; North American Philips for Baker Furniture and Milling Road Furniture—a division of Baker Furniture; Bissell, Inc. Brandywine F.R.P., Inc. for AAA Associates; By-Pass Paint Shop, Inc.; Cambridge Mfg. Co. Inc.; Camfield Fiberglass Plastics; Carbonneau Industries, Inc.—a division of Rockford Corporation; Environmental Coatings, Inc. for Chemical Specialties, Inc.; Chemetron Investments, Inc. for Chemetron Corporation; Crown Beverage Packaging, Inc. for Continental Can Company, Inc.; Kent Plastics Finishing for Kent Decorative and Kent Finishing; CTS Corporation; JSJ Corporation for DeKalb Molded Plastics and Michigan Plastic Products Company; Don Seelve Ford, Inc.; Dow Corning Corporation; Eagle Ottawa Leather Co.; Elastodyne—a subsidiary of ITT Corporation; Elmer's Body Shop; Enamelite Industries, Inc.; Clarcor for EPC Industries; Evans Tempcon, Inc.; Expert Coating Co., Inc.; Federal-Mogul Corporation; Ferro Corporation; Fisher Body—General Motors Corporation; Fastener Coatings, Inc.; Gallmeyer & Livingston Co.; Colwell/General, Inc. for General Color Graphics, Inc.; Grand Rapids Label Company; White Consolidated Industries, Inc. for White Consolidated (GR Manufacturing), Kelvinator, Inc., and Greenville Products Corp.; Lear Plastics Corporation for Lear Siegler, Inc. and Lear Siegler, Inc.—Haas Division; Harlo Products Corporation; Harris Manufacturing; Hastings Fiber Glass Products, Inc.; Hexcel Chemical; Highland Chrysler; TNT Holland Motor Express; Howmet Turbine Components Corporation; Hussey Seating Co. for Ideal Seating; Patrick Industries, Inc. for ILC, Inc.; Internal Grinding Abrasives, Inc.; Irwin Seating Co.; James Heddon's Sons, Inc.; Johnson Furniture Co.; Kellogg Company; Kindel Furniture Company; Cooper Industries, Inc.—Kirsch Division; Knape Industries, Inc., Tomkins Industries, Inc.—Lasco Industries Division; Harrow Products, Inc. for Leigh Products; Leon Plastics, Inc. for Leon Chemical & Plastics; Charlotte Co., Inc. for Luvan, Inc.; Magic Finishing; Knape & Vogt for Modar, Inc.; Oliver Machinery Company; Orson Coe Pontiac Body Shop; Panel Processing of Coldwater, Inc.; Paw Paw Plating; Allied-Signal, Inc. for Prestolite Corp.; Pullman Industries, Inc.; Rapid Finishing, Inc.; Refrigeration Manufacturing Company; Regal Finishing Company; Reliable Past & Chemical Co.; Reliance Finishing Company; Robroy Industries, Inc. for Robroy Industries and Stahlin Brothers; Rowe International; Four Winns, Inc.; Seaver Industrial Finishing Co.; Serviscreen, Inc.; The Sherwin-Williams Company; Stephenson & Lawyer, Inc.; Ameriscribe Corporation for Story & Clark Piano; Superior Industrial Products, Inc.; Technical Systems, Inc.; Teledyne Industries, Inc. for Teledyne Diecast; Thermotron; Thierica, Inc.; Tri-River Industries, Inc.; Valley City Planting Co. (Avien Corp.); Coachmen Industries, Inc. for Viking Boat Co., Inc.; Warner Fiberglass Products; Wealthy Body Shop; Wolverine World Wide;

Zeeland Industries, Inc.; Glastec, Inc.—a division of Eljer Manufacturing, Inc.

These one hundred parties will pay $1,384,714 in settlement payments for the first operable unit under the agreement, subject to the contingency that EPA may elect not to complete the settlement based on matters brought to its attention during the public comment period established by this Notice. Of this amount, $197,415 would reimburse EPA for a portion of its past response costs at the Organic Chemicals, Inc. site. The remaining $1,187,299 would be available for reimbursement of the major potentially responsible parties (PRPs) for their implementation of the first operable unit at the site, pursuant to the terms of the Unilateral Administrative Order (UAO) that was issued to all the PRPs on January 3, 1992.

EPA is entering into this agreement under the authority of section 122(g) and 107 of CERCLA. Section 122(g) authorizes early settlements with *de minimis* parties to allow them to resolve their liabilities at Superfund sites without incurring substantial transaction costs. Under this authority, the agreement proposes to settle with parties for the first operable unit at the Organic Chemicals, Inc. site who are responsible for less than 1.0 percent of the total amount of solvents sent to the site between 1968 and 1980. The proposed settlement reflects, and was agreed to based on, conditions as known to the parties as of February 13, 1992. Settling Parties will be required to pay their volumetric share of the Government's past response costs and the estimated future response costs for the first operable unit at the site. Settling parties will also be required to pay a settlement premium of 0.6 (i.e., a 1.6 multiplier) of the estimated future response costs for the first operable unit, based on the potential for cost overruns in implementing the remedy and the potential for remedy failure. In exchange, Settling Parties will receive a complete release from further civil or administrative liabilities for the first operable unit at the site. The settlement, as it is now proposed, includes several minor adjustments to the identity of settling parties and the volumetric shares of settling parties, which were made after the proposal was sent to all eligible parties on February 13, 1992, in response to additional information provided by those parties. The affected parties are: Hussey Seating Company (Ideal Seating Company), North American Philips (Milling Road Furniture), and Robroy Industries, Inc. (Stahlin Brothers).

The Environmental Protection Agency will receive written comments relating to this agreement for thirty days from the date of publication of this notice.

A copy of the proposed administrative settlement agreement may be obtained in person or by mail from the EPA's Region V Office of Regional Counsel, 77 West Jackson Boulevard, Chicago, Illinois, 60604–3590. Additional background information relating to the settlement is available for review at the EPA's Region V Office of Regional Counsel.

Authority: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Sections 9601–9675.

Robert Springer,

Acting Regional Administrator.

[FR Doc. 92–19066 Filed 8–10–92; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

[DA 92–1053]

Comments Invited on Oklahoma Public Safety Plan

The Commission has received the public safety radio communications plan for Oklahoma (Region 34).

In accordance with the Commission's Memorandum Opinion and Order in General Docket 8–112, Region 34 consists of the State of Oklahoma. General Docket No. 87–112, 3 FCC Rcd 2113 (1988).

In accordance with the Commission's Report and Order in General Docket No. 87–112 implementing the Public Safety National Plan, interested parties may file comments on or before September 9, 1992 and reply comments on or before September 24, 1992. (See Report and Order, General Docket No. 87–112, 3 FCC Rcd 905 (1987), at paragraph 54.)

Commenters should send an original and five copies of comments to the Secretary, Federal Communications Commission, Washington, DC 20554 and should clearly identify them as submissions to PR Docket 92–171 Oklahoma-Public Safety Region 34.

Questions regarding this public notice may be directed to Betty Woolford, Private Radio Bureau, (202) 632–6497 or Ray LaForge, Office of Engineering and Technology (202) 653–8112.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92–18953 Filed 8–10–92; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Public Information Collection Requirements Submitted to OMB for Review

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following public information collection requirements for review and clearance in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

DATES: Comments on this information collection must be submitted on or before October 13, 1992.

ADDRESSES: Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: the FEMA Information Collections Clearance Officer at the address below; and to Gary Waxman, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503, (202) 395–7340, within 60 days of this notice.

FOR FURTHER INFORMATION CONTACT: Copies of the above information collection request and supporting documentation can be obtained by calling or writing Linda Borror, FEMA Information Collections Clearance Officer, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2624.

Type: New collection.

Title: Evaluation Form for Fallen Firefighters Survivors Grief Seminar.

Abstract: The United States Fire Administration will sponsor the 11th Annual National Fallen Firefighters memorial Service. In conjunction with this service, the USFA will conduct an educational grief seminar October 10, 1992, to assist families of fallen firefighters in dealing with loss of their loved ones in the line of duty. Participants of the seminar will be asked to evaluate the seminar. The USFA will use the evaluations to evaluate the effectiveness of the speakers, facilitators, materials, and program format to determine whether the seminar is helpful and should be continued in the future.

Type of Respondents: Individuals and housenolds.

Estimate of Total Annual Reporting and recordkeeping Burden: 37.5 Hours.

Number of Respondents: 150.

Estimated Average Burden time per Response: 15 Minutes.

Frequency of Response: One-Time.

Dated: July 29, 1992.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 92-18954 Filed 8-10-92; 8:45 am]

BILLING CODE 6718-01-M

Public Information Collection Requirements Submitted to OMB for Review

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following public information collection requirements for review and clearance in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

DATES: Comments on this information collection must be submitted on or before October 13, 1992.

ADDRESSES: Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: the FEMA Information Collections Clearance Officer at the address below; and to Gary Waxman, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503, (202) 395-7340, within 60 days of this notice.

FOR FURTHER INFORMATION CONTACT: Copies of the above information collection request and supporting documentation can be obtained by calling or writing Linda Borror, FEMA Information Collections Clearance Officer, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-2624.

Type: New Collection.

Title: "Success Stories" Based on Accomplishment of Graduates of Emergency Management Institute's (EMI's) Professional Development Series (PDS).

Abstract: FEMA seeks success stories from graduates of EMI's PDS curriculum. This curriculum provides participants with fundamental emergency management and leadership skills and abilities required to mitigate against, prepare for, respond to, and recover from emergencies and disasters, including natural disasters, technological calamities, and national security crises. Local, county, and State emergency management personnel will respond by showing the value of the PDS training program and the improvements community's have made in developing programs or projects that reduce loss of life and property caused by emergencies and disasters. Submissions will be compiled into a booklet for distribution to emergency management communities for information and replication of programs or projects.

Type of Respondents: State and local governments.

Estimate of Total Annual Reporting and Recordkeeping Burden: 250 Hours.

Number of Respondents: 50.

Estimated Average Burden Time per Response: 5 Hours

Frequency of Response: One-Time.

Dated: July 24, 1992.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 92-18955 Filed 8-10-92; 8:45 am]

BILLING CODE 6718-01-M

Public Information Collection Requirements Submitted to OMB for Review

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following public information collection requirements for review and clearance in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

DATES: Comments on this information collection must be submitted on or before October 13, 1992.

ADDRESSES: Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: the FEMA Information Collection Clearance Officer at the address below; and to Gary Waxman, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503, (202) 395-7340, within 60 days of this notice.

FOR FURTHER INFORMATION CONTACT: Copies of the above information collection request and supporting documentation can be obtained by calling or writing Linda Borror, FEMA Information Collections Clearance Officer, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-2624.

Type: New collection.

Title: Survey to Develop a Prototype National System Using Local Emergency Managers at Major Disasters.

Abstract: FEMA is asking State and local emergency managers to complete the survey to provide data indicating interest, availability, experience and background, and other factors that may affect the development of a prototype national system to use emergency managers at major disaster sites. FEMA will use the data to evaluate the feasibility of developing the prototype system to identify and mobilize experienced State and local emergency management personnel during major disasters and emergencies.

Type of Respondents: State and local governments.

Estimate of Total Annual Reporting and Recordkeeping Burden: 995 Hours.

Number of Respondents: 2,116.

Estimated Average Burden Time Per Response: 28 Minutes.

Frequency of Response: One-Time.

Dated: July 24, 1992.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 92-18956 Filed 8-10-92; 8:45 am]

BILLING CODE 6718-01-M

Public Information Collection Requirements Submitted to OMB for Review

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following public information collection requirements for review and clearance in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

DATES: Comments on this information collection must be submitted on or before October 13, 1992.

ADDRESSES: Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden to: the FEMA Information Collections Clearance Officer at the address below; and to Gary Waxman, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503, (202) 395-7340, within 60 days of this notice.

FOR FURTHER INFORMATION CONTACT: Copies of the above information collection request and supporting documentation can be obtained by calling or writing Linda Borror, FEMA Information Collections Clearance Officer, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-2624.

Type: Revision of 3067-0192.

Title: Disaster Housing Post Assistance Survey.

Abstract: The Disaster Housing Post Assistance Survey is used by FEMA to identify trends that indicate the success or failure of the Temporary Housing Assistance Program delivery process and to measure how well the program is

meeting its objectives. The program provides temporary housing assistance to eligible victims of major disasters or emergencies. The survey is completed by all pre-disaster homeowners who receive rental assistance under the program. A sample is conducted of homeowners who receive assistance to make minimal repairs to their property and of renters who receive rental assistance.

Type of Respondents: Individuals and households.

Estimate of Total Annual Reporting and Recordkeeping Burden: 1,500 Hours.

Number of Respondents: 6,000.

Estimated Average Burden Time per Response: 15 Minutes.

Frequency of Response: One-time.

Dated: July 27, 1992.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 92-18957 Filed 8-10-92; 8:45 am]

BILLING CODE 6718-01-M

COMMISSION OF FINE ARTS

Meeting

The Commission of Fine Arts' next meeting is scheduled for September 24, 1992 at 10 a.m. in the Commission's offices in the Pension building, Suite 312, Judiciary Square, 441 F Street, NW., Washington, DC 20001 to discuss various projects affecting the appearance of Washington, DC, including buildings, memorials, parks, etc.; also matters of design referred by other agencies of the government.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, DC August 3, 1992.

Charles H. Atherton,

Secretary.

[FR Doc. 92-18973 Filed 8-10-92; 8:45 am]

BILLING CODE 6330-01-M

GENERAL SERVICES ADMINISTRATION

Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments

Announcement is hereby given that the General Services Administration has adopted the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, Office of Management and Budget Circular No. A-102.

Persons requiring further information on this adoption, should contact: Ms. Ada Rairigh, Branch Chief, Contracting Branch, Public Buildings Service, General Services Administration, (202) 501-0907 Extension 41.

Dated: August 4, 1992.

Sharon Jenkins,

Director, Contract Management Division.

[FR Doc. 92-19042 Filed 8-10-92; 8:45 am]

BILLING CODE 6820-23-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of the Assistant Secretary for Personnel Administration; Privacy Act of 1974; Revision to Existing System of Records

AGENCY: Employee Assistance Program, Office of the Assistant Secretary for Personnel Administration, Office of the Secretary, HHS.

ACTION: Notice of revision of Privacy Act system of records.

SUMMARY: In accordance with the Privacy Act, HHS is giving notice that it is revising one of its system of records, 09-90-0010—Employee Assistance Program (formerly Employee Counseling Services), HHS/OS/ASPER. It was most recently published on July 18, 1989. The notice is being revised to clarify the notification procedures and update the list of system managers. Records in this system contain information on employees and their family members who have been counseled by the Employee Assistance Program for all types of personal problems.

EFFECTIVE DATE: This amendment is effective on August 11, 1992.

FOR FURTHER INFORMATION CONTACT: Manager, Human Resources Development Policy Group, room 5-35E, 200 Independence Ave., SW., Washington, DC 20201. Telephone number (202) 690-7322.

SUPPLEMENTARY INFORMATION: The previously published notice did not describe the mediated access procedures allowed by the Privacy Act. This notice makes those procedures clear. In addition, the list of system managers has been updated.

The notice is published below in its entirety, as amended.

Thomas S. McFee,

Assistant Secretary for Personnel Administration.

09-90-0010

SYSTEM NAME:

Employee Assistance Program Records HHS/OS/ASPER/OPS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Designated offices providing counseling and/or referral for counseling for employees and their family members (see Appendix 1).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system covers HHS employees, employees of other organizations serviced by the HHS EAP, or family members of any of these employees who have been counseled and/or referred by the EAP for counseling and/or other assistance.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains records of each employee and family member who utilized the EAP. Examples of information which may be found in each record are employee or family member name, date of birth, grade, job title, home address, telephone numbers, and supervisor's name and telephone number. In addition to the demographic data, certain clinical information is normally maintained in each record including a psychosocial history, assessment of personal problem, information regarding referrals to treatment facilities in the community, and intervention outcomes. Finally, if an employee is referred to the EAP by a supervisor, the record may contain information regarding the referral such as leave record, reasons for referral, and outcomes of supervisory interventions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7361, 7362, 7901, 7904, 44 U.S.C. 3101.

PURPOSE(S):

These records are used to document the nature and extent of the employee's or family member's personal problem and the background information necessary for formulating an intervention plan in an effort to resolve the personal problem and return the employee to full productivity. The record is also used to document, when

appropriate, where the employee or family member has been referred for treatment or rehabilitation and the progress in such treatment.

Anonymous information from these records is also needed for the purpose of preparing statistical reports and analytical studies in support of the EAP's management.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) HHS contemplates that it will contract with a private firm, individual, or other group such as a Federal Employee Assistance Program consortium for the purpose of providing the EAP functions. Relevant records will be disclosed to such a contractor. The contractor shall be required to maintain Privacy Act safeguards with respect to such records. The contractor will surrender to the EAP all of these records as well as any new records at the time of contract termination.

(2) HHS may disclose information from this system of records for litigation purposes when

(a) HHS, or any of its components, or

(b) Any HHS employee in his or her official capacity, or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee, or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components

is a party to litigation, and HHS determines that such use of records is relevant and necessary to the litigation and would help in the effective representation of the government party. The disclosure may be made to the Department of Justice. Where the records are *not* covered by the Confidentiality of Alcohol and Drug Abuse Patient Records regulations (42 CFR part 2), disclosures may also be made to a court or other tribunal, or to another party before such tribunal. Any disclosure of such patient records must be pursuant to a qualified service organization agreement that meets the requirements of 42 CFR part 2 *and* must also comply with all other aspects of these regulations. The Director of the Employee Assistance Program (in ASPER) must personally approve any disclosure made under this routine use based on his or her determination that it is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Employee records are maintained in folders, on index cards and on computer readable media. Computer systems are discrete, for EAP use only, and/or are password protected.

RETRIEVABILITY:

Records are retrieved by a case code number, unique to the employee or family member utilizing the program. These numbers are cross indexed by name.

SAFEGUARDS:

(1) *Authorized Users:* Access to these records is limited to EAP Administrators who work directly with employees and family members in each program location (see Appendix 1) and their immediate staffs (including staff counselors, staff secretaries, contract or consortia counselors and secretaries). All EAP Administrators, whether or not they directly provide clinical services, may access the records for the purposes of program evaluation, destroying records at the end of their period of maintenance, and transferring records from one contractor to another.

(2) *Physical Safeguards:* All records are stored in a metal filing cabinet equipped with at least a combination lock, and preferably a locking bar. This file cabinet is in a secured area, accessible only to the EAP staff, and is locked when not in use. Computer readable information is maintained in discrete systems and/or is password protected. Computers are also stored in secured areas, accessible to only the EAP staff. These records are always maintained separate from any other system of records.

(3) *Procedural Safeguards:* All persons having access to the records shall have previous training in the proper handling of records covered by the Privacy Act and 42 CFR part 2 (confidentiality of Alcohol and Drug Abuse Patient Records). These acts restrict disclosures to unique situations, such as medical emergencies, except when the employee or family member has consented in writing. Furthermore, employees, and family members who utilize the EAP will be informed in writing of the confidentiality provisions; and secondary disclosure of information is prohibited without employee consent.

RETENTION AND DISPOSAL:

Records are retained until three years after the employee or family member has ceased contract with the EAP or until any litigation is resolved. However, if an employee has been terminated from HHS employment, records are retained for at least three years after the official date of termination and until any litigation is resolved. Files are then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

The records of individuals participating in the EAP are managed by the EAP Administrations in the various regional and headquarters offices (Appendix1).

NOTIFICATION PROCEDURES:

Inquiries to determine whether the system contains a record about the requester should be addressed to the system manager where the counseling was provided (see Appendix 1). The individual should provide his or her name, grade, organization where employed, date of birth, and location and approximate date of counseling. An individual who request notification of or access to a medical record shall, at the time the request is made, designate in writing a responsible representative, who may be a physician, who will be willing to review the record and inform the subject individual of its contents at the representative's discretion. Upon receiving a request, the EAP Administrator shall weigh the need for disclosure against the potential injury to the patient, to the physician-patient relationship, and to the treatment services. The EAP Administrator will then determine whether to disclose the record directly to the individual or to disclose it to the representative.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURES:

Contact the EAP Administrator at the address found in Appendix 1, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction.

RECORD SOURCE CATEGORIES:

Information in this system of records is: (1) Supplied directly by the individual, or (2) supplied by a member of the employee's family, or (3) derived from information supplied by the individual, or (4) supplied by sources to whom the employee and/or family member has been referred for assistance, or (5) supplied by Department officials, or (6) supplied by EAP counselors.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix 1

Regional Offices

Region I

Employee Assistance Program Administrator, HHS Regional Personnel Office, JFK Federal Building, Room 1503, Boston, Massachusetts 02203

Region II

Employee Assistance Program Administrator, HHS Regional Personnel Office, Room 39–120, 26 Federal Plaza, New York, New York 10278

Region III

Employee Assistance Program Administrator, HHS Regional Personnel Office, Room 9400, 3535 Market Street, Philadelphia, Pennsylvania 19104

Region IV

Employee Assistance Program Administrator, HHS Regional Personnel Office, 101 Marietta Tower, Room 1604, Atlanta, Georgia 30323

Region V

Employee Assistance Program Administrator, HHS Regional Personnel Office, 22nd Floor, 105 West Adams Street, Chicago, Illinois 60603

Region VI

Employee Assistance Program Administrator, HHS Regional Personnel Office, Room 930, 1200 Main Tower, Dallas, Texas 75202

Region VII

Employee Assistance Program Administrator, HHS Regional Personnel Office, P.O. Box 15458, 601 East Twelfth Street, Kansas City, Missouri 64106

Region VIII

Employee Assistance Program Administrator, HHS Regional Personnel Office, Room 1062, 19th & South Streets, Denver, Colorado 80294

Region IX

Employee Assistance Program Administrator, HHS Regional Personnel Office, Room 118, 50 United Nations Plaza, San Francisco, California 94102

Region X

Employee Assistance Program Administrator, HHS Regional Personnel Office, Mail Stop RX–05, 2201 Sixth Avenue, Seattle, Washington 98121

Other Offices

Centers for Disease Control, Employee Assistance Program Administrator, Personnel Management Office, Centers for Disease Control, 1600 Clifton Road, NE., Mail Stop D01, Atlanta, Georgia 30333

Health Care Financing Administration, Employee Assistance Program Administrator, G–21 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207

National Institutes of Health, Employee Assistance Program Administrator, Building 31, Room 1C02, 9000 Rockville Pike, Bethesda, Maryland 20892

Public Health Services, Employee Assistance Program Administrator, Room 13–35 Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857

Social Security Administration, Employee Assistance Program Administrator, 3120 Annex, 6401 Security Boulevard, Baltimore, Maryland 21235

Southwest Complex, Employee Assistance Program Administrator, Room 1036 Switzer Building, 330 C Street, SW., Washington, D.C. 20201

[FR Doc. 92–18978 Filed 8–10–92 8:45 am]

BILLING CODE 4150–04–M

Administration for Children and Families

Agency Information Collection Under OMB Review

AGENCY: Administration for Children and Families, Office of Family Assistance, HHS.

Notice

Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), we have submitted to the Office of Management and Budget (OMB) a request for approval of an extension of an existing information collection entitled "Participation Rate Statistical Report", OMB Control Number 0970–0098. This request for OMB clearance is made by the Office of Family Assistance (OFA) of the Administration for Children and Families (ACF).

ADDRESSES: Copies of the information collection request may be obtained from Steve Smith, Office of Information Systems Management, by calling (202) 401–9235.

Written comments and questions regarding the requested approval for information collection should be sent directly to: Kristina Emanuels, OMB Desk Officer for ACF, OMB Reports Management Branch, New Executive Office Building, room 3002, 725 17th Street, NW., Washington, DC 20503, (202) 395–7316.

Information on Document

Title: Participation Rate Statistical Report, Form FSA–103.

OMB No.: 0970–0098

Description: The Job Opportunities and Basic Skills Training (JOBS) program was established under title II of the Family Support Act for the purpose of amending title IV of the Social Security Act to encourage and assist needy children and parents under the new program to obtain the education, training and employment needed to avoid long-term welfare dependence, and to make other necessary improvements to assure that the new program will be more effective in achieving its objectives.

Section 201(c)(2) of title II of the Statute requires the Administration for Children and Families (ACF) to reduce the Federal Financial Participation (FFP) rate to 50% if a specified percent of those individuals required to participate do not participate. Consequently, ACF must collect information necessary to determine that each State has met the participation rate requirements specified in the Statute. If the State fails to provide the requested information, FFP rates may be established and paid that are incorrect.

Annual Number of Respondents: 51.

Annual Frequency: 4.

Average Burden Hours Per Response: 12.

Total Burden Hours: 2448.

Dated: August 1, 1992.

Naomi B. Marr,

Director, Office of Information Systems Management.

[FR Doc. 92–19031 Filed 8–10–92; 8:45 am]

BILLING CODE 4130–01–M

Revised Federal Allotments to States for Developmental Disabilities Basic Support and Protection and Advocacy Formula Grant Programs for Fiscal Year 1993.

AGENCY: Administration on Developmental Disabilities, Administration for Children and Families, Department of Health and Human Services.

ACTION: Correction Notice: Revised Notification of the Fiscal Year 1993 Federal Allotments to States for Developmental Disabilities Basic Support and Protection and Advocacy Formula Grant Programs.

SUMMARY: This notice sets forth the revised Fiscal Year 1993 individual allotments to States administering the Basic Support and Protection and Advocacy programs, pursuant to section 125 of the Developmental Disabilities Assistance and Bill of Rights Act (Act). This revision is required to correct the amounts published in the **Federal Register** on March 13, 1992, (57 FR 8877) which were a result of an administrative error of excluding the Republic of Palau, the Republic of the Marshall Islands, and the Federated States of Micronesia from the formula under the Basic Support program. There is no change in the amounts published for the Protection

and Advocacy program. The allotments to the States published herein are based upon Fiscal Year 1992 funding levels, and are contingent upon Congressional appropriations for FY 1993. If Congress enacts and the President approves an amount different from the Fiscal Year 1992 funding levels, the allotments will be adjusted accordingly. The revised amounts published herein supersede those published in the **Federal Register** on March 13, 1992.

EFFECTIVE DATE: October 1, 1992.

FOR FURTHER INFORMATION CONTACT: Bettye J. Mobley, Chief, Family Support Branch, Office of Financial Management, Administration for Children and Families, Department of Health and Human Services, 370 L'Enfant Promenade SW., Washington, DC 20447, Telephone (202) 245–7220.

SUPPLEMENTARY INFORMATION: Section 125(a)(2) of the Act requires that adjustments in the amounts of State allotments may be made not more often than annually and that States are to be notified not less than six (6) months before the beginning of any fiscal year of any adjustments to take effect in that fiscal year.

The Administration on Developmental Disabilities updated the data elements for issuance of Estimated Fiscal Year 1993 allotments for the Developmental Disabilities formula grant programs. The data elements are the same as those published in the **Federal Register** on March 13, 1992, which are:

A. The number of beneficiaries in each State and Territory under the Childhood Disabilities Beneficiary Program, December 1990, are from Table 5.J10 of the "Social Security Bulletin: Annual Statistical Supplement 1991" issued by the Social Security Administration, U.S. Department of Health and Human Services. The numbers for the Northern Mariana Islands and the Trust Territories of the Pacific Islands, included under 'Abroad' in the Table, were obtained from the Social Security Administration;

B. State data on Average Per Capita Income, 1985–90, are from Table 1, page 30 of the "Survey of Current Business," August 1991, issued by the Bureau of Economic Analysis, U.S. Department of Commerce; comparable data for the Territories also were obtained from that Bureau; and

C. States and Territories population data are from the 1990 Census Population Counts. Data for the States were issued in the U.S. Department of Commerce, Bureau of the Census report entitled, "Census Population—Housing" (CPH–L–4, Summer 1991); and the Territories Data were issued individually by "Census Bureau Press Releases" (CB91–142, CB91–242, CP91–243, CB91–244, CB91–263, and CP91–276, July, 1991). State data for the working population (ages 18–64) are also based upon the 1990 Census Population Counts. The Territories' working populations were issued in the Bureau of Census report, "General Characteristics Report: 1980," which is the most recent data available from the Bureau.

REVISED ESTIMATED FY 1993 ALLOTMENT—ADMINISTRATION ON DEVELOPMENT DISABILITIES

	Basic support	Protection and advocacy
Total	$67,706,000	$22,500,000
Alabama	1,299,892	401,558
Alaska	420,475	214,470
Arizona	894,518	274,948
Arkansas	743,927	234,689
California	5,851,708	1,772,122
Colorado	720,357	233,188
Connecticut	655,941	221,549
Delaware	420,475	214,470
District of Columbia	420,475	214,470
Florida	2,872,840	896,590
Georgia	1,635,129	515,908
Hawaii	420,475	214,470
Idaho	420,475	214,470
Illinois	2,584,387	815,810
Indiana	1,437,587	453,714
Iowa	771,149	243,511
Kansas	602,525	214,470
Kentucky	1,214,052	371,577
Louisiana	1,346,232	424,947
Maine	420,475	214,470
Maryland	928,081	291,535
Massachusetts	1,271,806	389,474
Michigan	2,351,391	740,846
Minnesota	1,004,499	316,925
Mississippi	920,281	287,401
Missouri	1,309,096	413,173
Montana	420,475	214,470
Nebraska	420,475	214,470
Nevada	420,475	214,470
New Hampshire	420,475	214,470
New Jersey	1,491,838	453,677
New Mexico	454,839	214,470
New York	4,116,396	1,238,661
North Carolina	1,791,568	565,409
North Dakota	420,475	214,470
Ohio	2,834,863	894,966
Oklahoma	883,384	267,313
Oregon	696,773	225,257
Pennsylvania	3,094,210	955,945
Rhode Island	420,475	214,470
South Carolina	1,025,074	323,305
South Dakota	420,475	214,470
Tennessee	1,410,519	445,179
Texas	4,244, 082	1,264,836
Utah	517,143	214,470
Vermont	420,475	214,470
Virginia	1,370,527	432,540
Washington	1,071,818	327,227
West Virginia	762,693	241,219
Wisconsin	1,282,576	404,973
Wyoming	420,475	214,470
American Samoa	220,750	114,741
Guam	220,750	114,741
Marshall Islands [1]	220,750	0
Micronesia [1]	220,750	0
Palau [1]	220,750	0
Puerto Rico	2,386,924	725,863
Trust Territories [2]	0	114,741
Virgin Islands	220,750	114,741
Northern Mariana Islands	220,750	114,741

[1] The 1990 Amendments to the Development Disabilities Assistance and Bill of Rights Act (the Act) provided that the Republic of the Marshall Islands, the Federated States of Micronesia and the Republic of Palau (formerly the Trust Territories of the Pacific Islands (TTPI)) each would receive a minimum allotment under the Basic Support formula program.

[2] Prior to the Act, TTPI had been eligible for a single minimum allotment under both programs, Basic Support and Protection and Advocacy. Under the 1990 Amendments, TTPI continues to be eligible for a single minimum amount under the Protection and Advocacy program; however, under the Compact of Free Association, (Public Law 99–239, only the Republic of Palau continues to be eligible to receive funds under the Protection and Advocacy program. Therefore, the Republic of Palau will receive its proportional share of the TTPI allotment, and the remainder will be withheld for reallotment in accordance with section 142(b)(1) of the Act.

Dated: August 4, 1992.

Deboarah L. McFadden,

Commissioner, Administration on Developmental Disabilities.

[FR Doc. 92–19024 Filed 8–10–92; 8:45 am]

BILLING CODE 4130–01–M

Intent To Reallot Part B—Basic Support and Part C—Protection and Advocacy Funds to States for Developmental Disabilities Expenditures

AGENCY: Administration on Developmental Disabilities, Administration for Children and Families, Department of Health and Human Services.

ACTION: Notice of intent to reallot fiscal year 1992 Funds.

SUMMARY: Pursuant to section 125(d) of the Developmental Disabilities Assistance and Bill of Rights Act, as amended, the Administration on Developmental Disabilities herein gives notice of intent to reallot funds which are: (1) released for reallotment by a State or Territory under the Basic Support and Protection and Advocacy programs; and (2) not available to the Federated States of Micronesia and the Republic of Marshall Islands (formerly part of the Trust Territories of the Pacific Islands) under the terms of the Compact of Free Association under the Protection and Advocacy program. Any State or Territory which wishes to release funds or cannot use the additional funds under Part C—Protection and Advocacy program for Fiscal Year 1992 should notify Bettye J.

Mobley, Chief, Family Support Branch, Office of Financial Management, Administration for Children and Families, Department of Health and Human Services, 370 L'Enfant Promenade SW., Washington, D.C. 20447, in writing within thirty (30) days of this promulgation.

FOR FURTHER INFORMATION CONTACT: Bettye J. Mobley on (202) 690–7220.

No funds are available for reallotment under the Basic Support program unless a State or Territory releases funds for reallotment. The proposed reallotment for Part C—Protection and Advocacy program are set forth below:

ADMINISTRATION ON DEVELOPMENTAL DISABILITIES FISCAL YEAR 1992 REALLOTMENT

	Protection and advocacy	Reallotment	Revised allotment
Total	$22,500,000	$0	$22,500,000
Alabama	411,140	1,796	412,936
Alaska	214,470	937	215,407
Arizona	264,813	1,157	265,970
Arkansas	239,857	1,048	240,905
California	1,731,102	7,645	1,738,747
Colorado	235,364	1,028	236,392
Connecticut	223,119	975	224,094
Delaware	214,470	937	215,407
District of Columbia	214,470	937	215,407
Florida	875,370	3,825	879,195
Georgia	517,232	2,260	519,492
Hawaii	214,470	937	215,407
Idaho	214,470	937	215,407
Illinois	829,355	3,624	832,979
Indiana	457,365	1,998	459,363
Iowa	248,569	1,086	249,655
Kansas	214,470	937	215,407
Kentucky	376,734	1,646	378,380
Louisiana	441,445	1,929	443,374
Maine	214,470	937	215,407
Maryland	289,068	1,263	290,331
Massachusetts	387,058	1,691	388,749
Michigan	736,457	3,218	739,675
Minnesota	314,498	1,374	315,872
Mississippi	292,802	1,279	294,081
Missouri	413,986	1,809	415,795
Montana	214,470	937	215,407
Nebraska	214,470	937	215,407
Nevada	214,470	937	215,407
New Hampshire	214,470	937	215,407
New Jersey	455,156	1,989	457,145
New Mexico	214,470	937	215,407
New York	1,249,745	5,461	1,255,206
North Carolina	567,251	2,478	569,729
North Dakota	214,470	937	215,407
Ohio	896,164	3,916	900,080
Oklahoma	272,780	1,192	273,972
Oregon	225,631	986	226,617
Pennsylvania	971,531	4,245	975,776
Rhode Island	214,470	937	215,407
South Carolina	330,595	1,444	332,039
South Dakota	214,470	937	215,407
Tennessee	450,760	1,969	452,729
Texas	1,269,820	5,549	1,275,369
Utah	214,470	937	215,407
Vermont	214,470	937	215,407
Virginia	429,145	1,875	431,020
Washington	320,784	1,401	322,185
West Virginia	238,500	1,042	239,542
Wisconsin	401,192	1,753	402,945
Wyoming	214,470	937	215,407
American Samoa	114,741	501	115,242
Guam	114,741	501	115,242
Puerto Rico	701,447	3,065	704,512
Virgin Islands	114,741	501	115,242
Northern Mariana Islands	114,741	501	115,242
Trust Territories consists of:			
Palau	16,855	0	16,855
Micronesia	63,268	−63,268	0
Marshall Islands	34,618	−34,618	0

Dated: August 4, 1992.

Deborah L. McFadden,

Commissioner, Administration on Developmental Disabilities.

[FR Doc. 92-19025 Filed 8-10-92; 8:45 am]

BILLING CODE 4130-01-M

Centers for Disease Control

Meeting on Revisions of the AIDS Surveillance Case Definition and Subsequent Comment Period

SUMMARY: The Centers for Disease Control (CDC) announces an open meeting to review research findings on illnesses that have been suggested for addition to the AIDS surveillance case definition. Data relevant to expansion of the AIDS surveillance case definition and to public health reporting and surveillance will be heard. Information from this meeting will be considered by CDC in completing the proposed expansion of the case definition which was made available for public comment on November 15, 1991. Subsequent written comments containing research findings, relevant data, or responses to the information presented during this open meeting will be considered by CDC if received on or before September 18, 1992.

TIME AND DATE: 8:30 a.m.–5 p.m., September 2, 1992.

PLACE: Centers for Disease Control, Auditorium B, 1600 Clifton Road, NE., Atlanta, Georgia 30333.

STATUS: Open to the public, limited only by the space available.

NOTIFICATION OF ATTENDANCE: If you plan to attend the meeting, please provide name(s), organization, address, and telephone and FAX numbers to the meeting organizer, PACE Enterprises, 17 Executive Park Drive, suite 200, Atlanta, Georgia 30329, telephone 404/633–8610, FAX 404/633–8745, by August 28, 1992.

SUPPLEMENTARY INFORMATION:

A. Background

CDC has proposed to revise the classification system for HIV infection to emphasize the clinical importance of the CD4+ T-lymphocyte count in the categorization of HIV-related clinical conditions. This revised system provides a framework for educating health care providers about the clinical and immunologic manifestations of HIV infection and replaces the classification system published in 1987. Consistent with this revised classification system, CDC has also proposed an expansion of the AIDS surveillance case definition to include all HIV-infected persons who have less than 200 CD4+ T-lymphocytes/μ1, in addition to those persons having any of the 23 clinical conditions in the 1987 surveillance case definition. From November 15, 1991, through February 14, 1992, CDC solicited public comment on the proposed revision of the HIV classification system and expansion of the AIDS surveillance case definition for adolescents and adults (56 FR 58059; 56 FR 65906). In general, the respondents supported expanding AIDS surveillance criteria, although opinions varied concerning optimal approaches for achieving this objective. In particular, some respondents recommended adding more clinical conditions to the AIDS surveillance definition, including conditions commonly diagnosed in HIV-infected women. This public meeting will allow a review of available scientific information regarding the question of whether or not additional diseases should be considered indicative of AIDS.

B. Meeting

CDC will hold an open meeting on September 2, 1992, to review research findings on illnesses that have been suggested for addition to the CDC AIDS surveillance case definition. Information from this meeting will be considered in completing the proposed expansion of the case definition which was made available for public comment on November 15, 1991. Subsequent written comments containing research findings, relevant data, or responses to the information presented during this open meeting will be considered by CDC if received on or before September 18, 1992.

C. Transcript

The proceedings of this meeting will be transcribed. Any interested person may, consistent with the orderly conduct of the meeting, record or otherwise make a transcript of the meeting.

D. Subsequent Comment Period

Written comments containing research findings, relevant data, or responses to the information presented during this open meeting will be considered by CDC if received on or before September 18, 1992. Comments should be submitted in writing to the meeting organizer, PACE Enterprises.

CONTACT FOR ADDITIONAL INFORMATION: Persons who wish to obtain background materials for the meeting may contact the meeting organizer, PACE Enterprises.

Dated: August 6, 1992.

Robert L. Foster,

Assistant Director for Special Projects, Office of Program Support, Centers for Disease Control.

[FR Doc. 92-19141 Filed 8-10-92; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 90C-0406]

Bausch & Lomb, Inc.; Filing of Color Additive Petition; Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is amending the filing notice for a color additive petition filed by Bausch & Lomb, Inc., to indicate that the petitioner has also requested that the regulation be amended to clearly identify the color additive as the reaction product of 1,4-bis[4-(2-methacryloxyethyl)phenylamino] anthraquinone (C.I. Reactive Blue 246) copolymerized with other monomers to form a contact lens material. Currently, the regulation indicates that the color additive consists only of 1,4-bis[4-(2-methacryloxyethyl)phenylamino]-anthraquinone. This action is in response to a request in a petition filed by Bausch & Lomb, Inc.

FOR FURTHER INFORMATION CONTACT: Helen R. Thorsheim, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9511.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of December 19, 1990 (55 FR 52099), FDA announced that a petition (CAP 1C0229) had been filed by Bausch & Lomb, Inc., 1400 North Goodman St., Rochester, NY 14692–0450. The petition proposed to amend § 73.3106 *1,4-bis[4-(2-methacryloxyethyl) phenylamino]anthraquinone* (21 CFR 73.3106) to provide for the additional safe use of 1,4-bis[4-(2-methacryloxyethyl) phenylamino]anthraquinone (C.I. Reactive Blue 246) copolymerized with hydroxyethyl methacrylate/N-vinyl pyrrolidone copolymers to color contact lenses.

Upon further review of the petition, the agency notes that the color additive is the reaction product of 1,4-bis[4-(2-methacryloxyethyl)phenylamino] anthraquinone with the contact lens monomers; in this case, hydroxyethyl methacrylate and N-vinyl pyrrolidone.

The dye covalently bonds with the monomers at the time of polymerization and becomes an integral part of the lens material. The petitioner, in a letter dated June 8, 1992, has also requested that § 73.3106 be modified to more accurately reflect that the color additive currently in § 73.3106 is 1,4-bis[4-(2-methacryloxyethyl)phenylamino] anthraquinone copolymerized with hydroxyethyl methacrylate. FDA, therefore, is amending the filing notice of December 19, 1990, to reflect that the petitioner has requested that § 73.3106 of the color additive regulations be amended to list the color additive as the copolymer formed as a reaction product of 1,4-bis[4-(2-methacryloxyethyl)phenylamino] anthraquinone with the contact lens monomers, either hydroxyethyl methacrylate or a blend of hydroxyethyl methacrylate and N-vinyl pyrrolidone.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: August 4, 1992.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 92-19037 Filed 8-10-92; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 92C-0292]

The Cosmetic, Toiletry, and Fragrance Association; Filing of Color Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that The Cosmetic, Toiletry, and Fragrance Association has filed a petition proposing that the color additive regulations be amended to provide for the safe use of FD&C Red No. 40 and its lakes for coloring drugs and cosmetics intended for use in the area of the eye.

FOR FURTHER INFORMATION CONTACT: Wesley Long, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-9515.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 706(d)(1) (21 U.S.C. 376(d)(1))), notice is given that a petition (CAP 6C0203) has been filed by The Cosmetic, Toiletry, and Fragrance Association, 1101 17th St. NW., Suite 300, Washington, DC 20036. The petition proposes to amend the color additive regulations in §§ 74.1340 *FD&C Red No. 40* and 74.2340 *FD&C Red No. 40* (21 CFR 74.1340 and 74.2340) to provide for the safe use of FD&C Red No. 40 and its lakes for coloring drugs and cosmetics intended for use in the area of the eye.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: August 4, 1992.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 92-18962 Filed 8-10-92; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 92C-0295]

The Cosmetic, Toiletry, and Fragrance Association; Filing of Color Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Cosmetic, Toiletry, and Fragrance Association (CTFA) has filed a petition proposing that the color additive regulations be amended to provide for the safe use of FD&C Blue No. 1 and its lakes for coloring drugs and cosmetics intended for use in the area of the eye.

FOR FURTHER INFORMATION CONTACT: Wesley Long, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-9515.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 706(d)(1) (21 U.S.C. 376(d)(1))), notice is given that a petition (CAP 6C0206) has been filed by CTFA, 1101 17th St. NW., Suite 300, Washington, DC 20036. The petition proposes to amend the color additive regulations in §§ 74.1101 *FD&C Blue No. 1* and 74.2101 *FD&C Blue No. 1* (21 CFR 74.1101 and 74.2101) to provide for the safe use of FD&C Blue No. 1 and its lakes for coloring drugs and cosmetics intended for use in the area of the eye.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: August 4, 1992.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 92-18961 Filed 8-10-92; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 92C-0294]

The Cosmetic, Toiletry, and Fragrance Association; Filing of Color Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Cosmetic, Toiletry, and Fragrance Association (CTFA) has filed a petition proposing that the color additive regulations be amended to provide for the safe use of D&C Green No. 5 for coloring drugs and cosmetics intended for use in the area of the eye.

FOR FURTHER INFORMATION CONTACT: Wesley Long, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-9515.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 706(d)(1) (21 U.S.C. 376(d)(1))), notice is given that a petition (CAP 6C0204) has been filed by CTFA, 1101 17th St. NW., Suite 300, Washington, DC 20036. The petition proposes to amend the color additive regulations in §§ 74.1205 *D&C Green No. 5* and 74.2205 *D&C Green No. 5* (21 CFR 74.1205 and 74.2205) to provide for the safe use of D&C Green No. 5 for coloring drugs and cosmetics intended for use in the area of the eye.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be

published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c).

Dated: August 4, 1992.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 92-18964 Filed 8-10-92; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 92P-0205]

Sour Cream Deviating From Identity Standard; Temporary Permit for Market Testing; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the Federal Register of July 8, 1992 (57 FR 30224), that announced that a temporary permit had been issued to Land O'Lakes, Inc., to market test a product designated as "no-fat sour cream" that deviates from the U.S. standard of identity for sour cream (21 CFR 131.160). The document was published with an inadvertent error. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Robin F. Thomas, Office of Policy (HF-27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2994.

In FR Doc. 92-15996, appearing on page 30225, in the Federal Register of Wednesday, July 8, 1992, the following correction is made: On the same page, in the first column, at the end of the document, the title "Director, Center for Veterinary Medicine" is corrected to read "Director, Center for Food Safety and Applied Nutrition".

Dated: August 4, 1992.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 92-18963 Filed 8-10-92; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 89G-0217]

Kraft, Inc.; Withdrawal of GRAS Affirmation Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a petition from Kraft, Inc., requesting that the agency affirm that the use of modified protein texturizers in frozen dessert-type products is generally recognized as safe (GRAS). The agency has determined that the petition is unnecessary because the subject of the petition is simply a mixture of ingredients that are already listed as GRAS or are food additives authorized for this use.

FOR FURTHER INFORMATION CONTACT: Rudolph Harris, Center for Food Safety and Applied Nutrition (HFF-333), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-9528.

SUPPLEMENTARY INFORMATION: In the Federal Register of August 14, 1989 (54 FR 33295), FDA published a notice that a petition (GRASP 9G0351) had been filed by Kraft, Inc., 801 Waukegan Rd., Glenview, IL 60024. The petition requested that the agency affirm that the use of modified protein texturizers in frozen-dessert type products is GRAS.

FDA has determined that the provisions of 21 CFR 184.1498, issued after this petition was received, provide for the use of these modified protein texturizers as a direct food ingredient in frozen dessert-type products. Therefore, Kraft, Inc., has withdrawn the petition without prejudice to a future filing.

I. Background

In the Federal Register of February 23, 1990 (55 FR 6384), FDA issued a final rule that affirmed the use of microparticulated protein product prepared from egg whites or milk protein as a direct food ingredient in frozen dessert-type products in § 184.1498 (21 CFR 184.1498). This regulation responded to a petition filed by The NutraSweet Co. In the preamble to the final rule, FDA discussed the steps of the microparticulation process and concluded that these steps were nothing more than commonly used food processing steps that have been shown through published studies not to change the nutritional value or the safety of food, including egg whites and milk protein. In a subsequent exchange of correspondence with The NutraSweet Co., FDA expressed no objection to the marketing of a microparticulated protein product prepared from whey protein concentrate, so long as that product complies in all respects with the whey protein concentrate regulation (21 CFR 184.1979c) (Ref. 1).

According to information in the Kraft petition, the modified protein texturizers are manufactured from either a combination of egg whites and whey protein concentrate or of egg whites and skim milk. The milk or egg proteins are mixed with xanthan gum in accordance with § 172.695 (21 CFR 172.695) and diluted with water. Food-grade hydrochloric acid is added to the solution to adjust the pH. The protein solution is processed in an auger pump to produce fibers. The fibers are then rinsed, washed, steamed, boiled, and cooled. The boiled, washed fibers are sheared to reduce the particle size. The resulting particles are subjected to a second shearing to further reduce their size. Following the second shearing, the solution contains about 5 percent solids. Depending on the desired use of the material, the solution is then concentrated to between 7 and 20 percent solids using a swept-surface vacuum evaporator.

Based on the available data, FDA concludes that egg whites and milk protein treated by the described process meet the conditions specified under the current regulation in § 184.1498. Furthermore, consistent with § 184.1498(a), FDA concludes that the xanthan gum is used in accordance with § 172.695 and the hydrochloric acid is used in accordance with 21 CFR 182.1057.

In the August 14, 1989, filing notice, FDA gave interested parties an opportunity to submit comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857. FDA received two comments in response to the published notice. One comment was from a law firm and the other comment was from a food manufacturer. The law firm commented that there was insufficient information in the petition to permit a thorough evaluation of safety. The food manufacturer, which had submitted a petition on a microparticulated protein product, commented that it did not want action on its petition delayed because of the similarity of their product to the Kraft product. A law firm representing Kraft, Inc., also responded to the issues raised by the other two comments. The issues raised by the comments and the agency's responses are discussed below. The agency is not discussing the petitioner's response because it is simply part of the petition that is being withdrawn and raises no issues contrary to this withdrawal.

II. Comments and Agency's Response to the Comments

A. The First Comment

The first comment contended that the information provided by the petitioner (Kraft, Inc.) lacked sufficient detail for FDA to make a GRAS determination. The comment listed three general areas and some specific areas in which, the comment contended, additional

information would be needed by the agency before a GRAS determination could be made.

1. Protein/gum complexes

The first general area of concern was the composition of the protein/xanthan gum complexes. The comment raised five specific issues about the composition and characteristics of the complexes which are stated below followed by FDA's response.

(a) The comment asserted that the protein/gum complex does not represent a fully dissociable complex of the original ingredients.

This issue would be relevant if the complexes were new distinct entities, the use of which is not authorized by a regulation permitting the use of the individual components. However, chemical tests establish that the complex is stable in a pH range of 3.0 to 4.0, but as the pH increases, as it does during intestinal digestion, the components of the complex repel each other and dissociation occurs. An in vivo digestibility study showed that the digestion of the ingredients is the same whether fed in the complexed or uncomplexed form. The petitioner's method of detecting its product (protein/xanthan gum complex) in food is based upon finding dissociated protein in the finished dessert.

The agency concludes that evidence presented in the petition demonstrates that dissociation occurs throughout processing, use, and digestion, and therefore, that the complexes are simply mixtures of ingredients, all of which are already permitted for this use in foods.

(b) The comment also asserted that information does not exist in the published literature to show that these complexes are safe for consumption by humans.

As discussed above, the complexes are temporary associations of separate components shown to be safe for use in food and dissociate to such safe substances. The comment presented no facts contrary to that conclusion. Therefore, there is no need for additional data on the complexes themselves.

(c) The comment asserted that it was particularly concerned about the potential for allergenicity of the complexes. The comment stated that no data were provided from the literature nor were experiments performed on the product's potential for allergenicity. The comment did not, however, provide evidence from chemical characterization of the modified protein texturizer that new proteins or antigenic sites are produced in the petitioned product.

The agency reviewed information on the allergenicity of microparticulated egg and/or milk proteins in its decision promulgating § 184.1498 (55 FR 6384). In that **Federal Register** document, the agency stated: "Given the fact that microparticulated protein products will produce allergic-type reactions in sensitive individuals, FDA has concluded that the use of microparticulated egg and milk protein product must be labeled * * * and the source of the protein be included on the name of the product." Because of the labeling requirement of § 184.1498(b)(3), persons who are allergic to egg white and milk proteins will be made aware of the presence of the constituent ingredients in these frozen dessert-type products. Thus, the agency concludes that there is sufficient information concerning allergenicity of these products to protect the public health.

(d) The comment stated that the results of the protein electrophoresis data are inconclusive because the description of the methods does not provide adequate detail.

Because these ingredients are already authorized for this use, FDA has concluded that there is no need for electrophoresis data.

(e) The comment alleged that if additional information regarding the processing conditions were provided, it might be possible to relate such conditions to other products made by similar methods that are GRAS. It stated that the process that is used to produce the protein/xanthan gum complexes is not specified.

The agency finds that the production process involves ingredient mixing, draining, boiling, washing, particle size reduction, and concentration. The starting materials are conventional dried egg whites, whey protein concentrate, xanthan gum, and hydrochloric acid, all of which are approved food additives or are GRAS for use in food. Although the process used results in a product material with special properties, the agency finds that the processing techniques do not raise an issue because common dairy processing equipment and routine manufacturing conditions are used to prepare finished food with the ingredients.

2. Adequacy of feeding studies

The second area of concern was the adequacy of Kraft's animal feeding studies. With regard to these studies, the comment raised three points: (a) The effect of spray drying and milling of the complex prior to incorporation in animal feed; (b) the absence of statistical testing between animals in the gum treatment levels, the lack of a control protein group not receiving xanthan gum, and the inability of the data to demonstrate a no effect level of xanthan gum mixed with these proteins; and (c) clarification of the results of the animal study with respect to the soft abnormally formed feces observed in the middle and high dose complex treatment groups.

The agency finds this comment to be irrelevant to the regulatory status of the petitioned product because, as discussed above, the complexes are not new distinct entities. The ingredients are already listed as GRAS or are food additives authorized for the petitioned use. The agency finds that the levels of use of xanthan gum proposed for use in frozen desserts is consistent with the regulation permitting use of xanthan gum and would not cause adverse effects. Even though animal bioassays were submitted, the agency finds that they raise no new issues of toxicological concern and that they are unnecessary. Therefore, this comment raises no issue.

3. Proposed labeling

The comment asserted that the labeling found in the petition is false and misleading because the starting materials are listed, not the final composition.

Ingredients must be listed on the label by their common or usual name. This is not changed by the petition. The ingredients are the names described in §§ 172.695 and 184.1498.

This comment concluded by stating that "it would be inappropriate for the FDA to affirm GRAS status for the modified protein texturizers until additional information is provided and reviewed."

The agency has determined that § 184.1498 already provides for the use of modified protein texturizers as a direct food ingredient in frozen dessert-type products, including the use of safe and suitable ingredients authorized in Parts 172, 182, or 184. Thus, FDA need not consider whether sufficient information exists in the petition to make a GRAS determination. Accordingly, the agency has determined that the petition is not necessary.

B. The Second Comment

The main issue addressed by the second comment was how Kraft's petition would affect the GRAS affirmation of the commenter's petition for a microparticulated protein product. The commenter requested that action on its petition not be delayed. The administrative record shows that the Kraft petition did not delay the petition.

III. Conclusions

The agency has evaluated the comments and all available information and finds, based on the evidence discussed above, that egg whites and milk protein treated by microfragmentation processing meet the conditions specified under the provisions of § 184.1498 and other applicable regulations. The petition (GRASP 9G0351) to affirm the use of modified protein texturizers in frozen dessert-type products submitted by Kraft, Inc., has, therefore, been withdrawn.

IV. References

The following reference has been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Letter to Jerry J. Hjelle from Alan M. Rulis, dated August 12, 1991.

Dated: August 4, 1992.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 92-19036 Filed 8-10-92; 8:45 am]

BILLING CODE 4160-01-F

Health Care Financing Administration

[BPD-710-CN]

RIN 0938-AE95

Medicare Program; Update of Ambulatory Surgical Center Payment Rates and Additions to and Deletions From the Current List of Covered Surgical Procedures; Correction

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice with comment period; correction.

SUMMARY: In the December 31, 1991 issue of the **Federal Register** (FR Doc 91-31166) (56 FR. 67666), we published a notice with comment period to update the payment rates for ambulatory surgical center (ASC) procedures and the list of covered ASC procedures. This notice corrects errors made in the December 31, 1991 document.

DATES: *Effective Date:* January 30, 1992.

FOR FURTHER INFORMATION CONTACT: Joan H. Sanow—Payment issues, (410) 966-5723. Robert Cereghino—Coverage issues, (410) 966-4645.

SUPPLEMENTARY INFORMATION: In a notice with comment period published in the **Federal Register** on December 31, 1991 (FR Doc. 91-31166) (56 FR 67666), we set forth the updated payment rates for ambulatory surgical center (ASC) services furnished on or after December 31, 1991 and announced additions to and deletions from the list of surgical procedures for which facility services are covered when the procedures are performed in an ASC. In the notice, we inadvertently omitted 13 procedures from the ASC list. These procedures were proposed in the December 7, 1990 **Federal Register** at 56 FR 50591-50592. We also omitted a discussion of a comment received on one of the codes and provided an incorrect response to another comment. In addition, the December 31, 1991 notice contained typographical and technical errors.

Accordingly, we are making the following corrections to the December 31, 1991 notice.

1. On page 67669, in the first column, under "2. Proposed Additions", the following "Comment" and "Response" are inserted after the first paragraph:

Comment: One commenter opposed the addition of CPT code 36522, extracorporeal photopheresis. The commente stated that CPT code 36522 should not be added to the list since no ASC is currently performing the procedure, although it may be peformed in an ASC in the future.

Response: The inclusion of this procedure in the list of covered ASC procedures was the result of general correspondence with the medical community. Therefore, we continue to believe the procedure should be added to the list.

2. On page 67671, in the first column, in the fifth "Response", following the "Comment" concerning male genital systems, the "Response" is revised to read as follows:

Response: A code was created and added January 1, 1991 to the CPT-4. Since it is a new code, we have no Medicare billing data relative to site of service and therefore must await annual data on which to make an ASC coverage determination.

3. On page 67679, in the first column, in the chart at the bottom of the column, CPT codes "15820", "15821", "15822" and "15823" and their descriptions are removed. These codes were inadvertently included in the list of "Proposed Additions Not Accepted" on page 67679. An explanation of why these codes are considered inappropriate to the ASC list is given on page 67672, in the second column, the "Response" under "Suggested Procedures that are Sometimes Cosmetic".

4. On page 67684, under "Head", under "Fracture and/or Dislocation", the following procedure is inserted after CPT code 21339:

Payment group	CPT code	Description
5	21343	Open treatment of closed or open depressed frontal sinus fracture.

5. On page 67685, under "Back and Flank", in the fourth line, the CPT code "21953" is changed to "21935".

6. On page 67686, under "Humerus (Upper Arm) and Elbow", under "Repair, Revision and Reconstruction", the following procedure is inserted after CPT code 24361:

Payment group	CPT code	Description
5	24362	Arthroplasty, elbow; with implant and fascia lata ligament reconstruction.

7. On page 67686, under "Humerus (Upper Arm) and Elbow", under "Fracture and/or Dislocation", in the fourth line, the payment group for CPT code 24587 is changed from "1" to "5".

8. On page 67686, under "Humerus (Upper Arm) and Elbow", under "Amputation", the payment group for CPT code 24925 is changed from "1" to "3".

9. On page 67687, under "Hand and Fingers", under "Excision", the following procedure is inserted above CTP code 26117:

Payment group	CPT code	Description
4	26037	Decompressive fasciotomy, hand (excludes 26035).

10. On page 67687, under "Hand and Fingers", under "Excision", in the last line, the payment group for CPT code 26262 is changed from "3" to "2".

11. On page 67687, under "Hand and Fingers", under "Repair, Revision or Reconstruction", the following procedure is inserted after CPT code 26548:

Payment group	CPT code	Description
2	26550	Pollicization of a digit.

12. On page 67687, under "Hand and Fingers", under "Repair, Revision or Reconstruction", the following procedure is inserted after CPT code 26580:

Payment group	CPT code	Description
5	26585	Repair bifid digit.

13. On page 67688, under "Pelvis and Hip Joint", under "Fractures and/or Dislocations", in the last line, the payment group for CPT code 27266 is changed from "1" to "2".

14. On page 67690, under "Excision" (which begins on page 67689), in the last line, the payment group for CPT code 28150 is changed from "2" to "3".

15. On page 67690, under "Arthroscopy", in the second line, the CPT code "20819" is changed to "29819".

16. On page 67690, under "Arthroscopy", the following procedure is inserted after CPT code 29825:

Payment group	CPT code	Description
3	29826	Arthroscopy, shoulder, surgical; decompression of subcranial space with partial acromioplasty with or without coracoacromial release.

17. On page 67691, under "Accessory Sinuses", under "Incision", in the last line, CPT code "30190" is changed to "31090".

18. On page 67691, under "Trachea and Bronchi", under "Endoscopy", the following procedures is inserted above CPT code 31629:

Payment group	CPT code	Description
3	31611	Construction of tracheoesophageal fistula and subsequent insertion of an alaryngeal speech prosthesis (e.g. voice button, Blom-Singer prosthesis).

19. On page 67692, under "Lungs and Pleura", under "Incision", the following procedure is inserted after CPT code 32000:

Payment group	CPT code	Description
2	32002	Thoracentesis with insertion of tube with or without water seal (e.g., for pneumothorax (separate procedure)).

20. On page 67692, under "Arteries and Veins", under "Venous", the following procedure is inserted after CPT code 36497:

Payment group	CPT code	Description
2	36522	Photopheresis, extracorporeal.

21. On page 67694, under "Rectum", under "Excision", in the last line, the payment group for CPT code 45150 is changed from "1" to "2".

22. On page 67696, under "Bladder", under "Transurethral Surgery (Ureter and Pelvis)", the payment group for CPT code 52336 is changed to from "3" to "4".

23. On page 67696, under "Testis", in the first line, the CPT code "54550" is changed to "54500".

24. On page 67698, under "Endoscopy-Laparoscopy-Hysteroscopy", the following procedure is inserted above CPT code 58990:

Payment group	CPT code	Description
5	58988	Laparascopy, surgical; with removal of adnexal structures (partial or total oophorectomy and/or salpingectomy).

25. On page 67698, under "Endoscopy-Laparoscopy-Hysteroscopy", the following procedures are inserted after CPT code 58990:

Payment group	CPT code	Description
2	58992	Hysteroscopy, with lysis of intrauterine adhesions or resection of intrauterine septum (any method).
3	58994	Hysteroscopy, with removal of submucous leiomyomata (any method).

26. On page 67699, under "Anterior Segment-Anterior Chamber", the payment group for CPT code 65850 is changed from "2" to "4".

27. On page 67700, under "Middle Ear", under "Repair", the following procedure is inserted after CPT code 69605:

Payment group	CPT code	Description
5	69662	Revision of stapedectomy or stapedotomy.

28. On page 67701, under "Deletions To Covered Procedures In ASCs", in the second line, CPT code "31078" is changed to "31708".

29. On page 67701, in the heading, following the list of "Deletions To Covered Procedures In ASCs", the word "Addemdum" is changed to "Addendum". In the same heading, in the second line, the date "September 30, 1991" is changed to "December 30, 1991" because the chart refers to procedures covered prior to the effective date of the notice, which was December 31, 1991.

30. On page 67701, in the footnote to "Addendum A.1.", in the second line, the date "September 30, 1991" is changed to "December 30, 1991" because the chart refers to procedures covered prior to the effective date of the notice, which was December 31, 1991.

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance)

Dated: August 4, 1992.

Neil J. Stillman,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 92–18968 Filed 8–10–92; 8:45 am]

BILLING CODE 4120-01-M

Health Care financing Administration

[HSQ–201–CN]

Medicare Program; Peer Review Organizations: Revised Scopes of Work for the District of Columbia, Puerto Rico, the Virgin Islands, and All States Except Delaware, Florida, Missouri, Montana, Nebraska, Nevada, Oklahoma, Rhode Island, South Carolina, Washington and Wyoming

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Correction notice.

SUMMARY: This notice replaces the **"EFFECTIVE DATES"** section with a **"DATES"** section and replaces the **"ADDRESSES"** section in the notice we published on revised scopes of work on June 16, 1992 (57 FR 26871). The purpose of these corrections is to state the date by which comments solicited on information collection requirements must be submitted in order to be considered timely and to give the HCFA address to which those comments should be addressed. These items of information were inadvertently omitted.

EFFECTIVE DATE: This correction is effective August 11, 1992.

FOR FURTHER INFORMATION CONTACT: Julie Brown, (410) 966–4669.

SUPPLEMENTARY INFORMATION: In document number 92–14034, published June 16, 1992 (57 FR 26871) titled, "HSQ–201–N, Peer Review Organizations for the District of Columbia, Puerto Rico, the Virgin Islands and all States except Delaware, Florida, Missouri, Montana, Nebraska, Nevada, Oklahoma, Rhode

Island, South Carolina, Washington and Wyoming," make the following changes:

In the third column of page 26871, replace the sections entitled EFFECTIVE DATES and ADDRESS with the following:

DATES: Effective dates: The effective dates of this notice are as follows:

For PROs in	On
Alaska, Arizona, California, District of Columbia, Georgia, Idaho, Indiana, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, New Jersey, New Mexico, South Dakota and Vermont.	July 16, 1992
Arkansas, Colorado, Illinois, Kansas, Mississippi, New Hampshire, Ohio, Oregon, Tennessee, Utah and West Virginia.	Oct. 1, 1992
New York and Pennsylvania	Dec. 1, 1992
Alabama, Connecticut, Iowa, Massachusetts, North Carolina, North Dakota, Puerto Rico, Texas, Virginia and Wisconsin.	Apr. 1, 1993
Hawaii and the Virgin Islands	July 1, 1993

Comment date: Comments on the information collection requirements found in section V of this notice will be considered if we receive them at the appropriate addresses, as provided below, by 5 p.m. on September 10, 1992.

ADDRESSES: Mail comments to the following addresses:

Health Care Financing Administration, Department of Health and Human Services, Attention: HSQ–201–N, P.O. 26676, Baltimore, MD 21207.

Office of Management and Budget, Office of Information and Regulatory Affairs, Attn: Allison Herron Eydt, HCFA Desk Officer, Room 3001, New Executive Office Building, Washington, DC 20503.

If you prefer, you may deliver your written comments to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

Due to staffing and resource limitations, we cannot accept facsimile (FAX) copies of comments. In commenting, please refer to file code HSQ–201–N. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC., on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

Because of the large numbers of items of correspondence we normally receive on notices, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified and, if we revise the content of this revised third scope of work, we will respond to the comments in that subsequent notice.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance Program)

Dated: August 4, 1992.

Neil J. Stillman,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 92–18967 Filed 8–10–92; 8:45 am]

BILLING CODE 4120–01–M

Public Health Service

Request for Nominations for Voting Members on National Vaccine Advisory Committee

AGENCY: Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (DHHS) is requesting nominations to fill three vacancies on the National Vaccine Advisory Committee. The Committee advises the National Vaccine Program and was established by title XXI, subtitle I, Sec. 2105 of the Public Health Service Act, enacted by Public Law 99–660, The National Vaccine Injury Compensation Act of 1986 (42 U.S.C. 300AA–1 *et seq.*).

DATES: Nominations are to be submitted by October 30, 1992.

ADDRESSES: All nominations for membership should be sent to Dr. Kenneth Bart (address below).

FOR FURTHER INFORMATION CONTACT: Kenneth J. Bart, M.D., M.P.H., Executive Secretary, National Vaccine Advisory Committee, National Vaccine Program, Office of the Assistant Secretary for Health, room 13A–56, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–0715; Fax number: (301) 443–3386.

SUPPLEMENTARY INFORMATION: The National Vaccine Program is requesting nominations of voting members for three vacancies on the National Vaccine Advisory Committee. Nominated individuals should have expertise in vaccine research or the manufacture of vaccines, or should be physicians, or members of parent organizations concerned with immunization, or representatives of State or local health agencies, or public health organizations. Members will be invited to serve four-year terms.

The National Vaccine Advisory Committee (1) studies and recommends ways to encourage the availability of an adequate supply of safe and effective vaccination products in the United States, (2) recommends research priorities and other measures the Director of the Program should take to enhance the safety and efficacy of vaccines, (3) advises the Director of the Program in the implementation of sections 2102, 2103, and 2104 of the Public Health Service Act, and (4) identifies annually for the Director of the Program the most important areas of government and nongovernment cooperation that should be considered in implementing these sections.

In keeping with normal departmental policy, nominees generally should not currently be serving on another DHHS advisory committee, although exceptions will be considered.

NOMINATION PROCEDURES: Any interested person may nominate one or more qualified persons for membership on the National Vaccine Advisory Committee. The nominee should be aware of the nomination, willing to serve as a member of the committee, and appear to have no conflict of interest that would preclude committee membership. A curriculum vitae of the nominee should be submitted with the nomination.

Dated: August 4, 1992.

James O. Mason,

Assistant Secretary for Health.

[FR Doc. 92–19022 Filed 8–10–92; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF THE INTERIOR

Meeting of the Take Pride in America Advisory Board

AGENCY: Take Pride in America, Office of the Secretary, United States Department of the Interior.

ACTION: Notice of meeting of the Take Pride in America Advisory Board.

Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. appendix (1988), that a meeting of the Take Pride in America Advisory Board will be held on August 24th and August 25th, 1992 at the Skyland Lodge in the Shenandoah National Park at Luray, Virginia. The Take Pride in America Advisory Board will convene on Monday, August 24, 1992. The General Business Session will

begin at 12:30 p.m. and conclude at 5 p.m. that day.

The Advisory Board will reconvene for a second day of meetings on Tuesday, August 25th, 1992 at the Skyland Lodge. The Board's three Subcommittees will meet prior to the general business meeting. Subcommittee meetings will be held from 8:30 a.m. until 9:30 a.m., at the Skyland Lodge Conference meeting center. The General Business Meeting will begin at 9:45 a.m. and conclude at 12 noon. The afternoon General Business Meeting will begin at 1 p.m. and conclude at 4 p.m. that day.

The fifth official meeting of the Take Pride in America Advisory Board will focus on three main topics: Presentations by the officials of the Department of the Interior; Presentation on Long Range Planning issues for the Take Pride in America Program; Recommendations to be submitted to the Secretary of the Interior; and Reports and Recommendations by the Board's Subcommittee chairmen.

The general business meetings will be open to the public. Space and facilities to accommodate members of the public are limited and persons will be accommodated on a first-come, first-serve basis. Anyone may file with the Advisory Board a written statement concerning matters to be discussed. The Chairman of the Board will allow for public commentary, but may restrict the length of presentations as necessary to allow the Board to complete its agenda within the allotted time.

Persons wishing further information concerning the meeting, or who wish to submit written statements, may contact Ms. Mary Ann Gomez, Take Pride in America, U.S. Department of Interior, Room 5129, 1849 C Street, NW., Washington, DC 20240, telephone number is (202) 208–3726.

A copy of the minutes of the meeting will be available for public inspection about five weeks after the meeting, in the Take Pride in America office, U.S. Department of the Interior, 1849 C Street, NW., Washington, DC 20240.

Mary Ann Gomez,

Advisory Board Coordinator.

[FR Doc. 92–19078 Filed 8–10–92; 8:45 am]

BILLING CODE 4310–10–M

Fish and Wildlife Service

Availability of Bird and Mammal Carcasses Recovered Following the Exxon Valdez Oil Spill to Qualified Applicants for Scientific, Educational or Public Display Purposes

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and application period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces that bird and mammal carcasses recovered following the *Exxon Valdez* oil spill will be incinerated prior to September 30, 1992. Prior to incineration, the Service shall make carcasses available to qualified applicants wishing to obtain carcasses for scientific, educational or public display purposes.

DATES: Applications for carcasses must be received on or before September 10, 1992.

ADDRESSES: Applications for carcasses should be addressed to the Office of the Oil Spill, U.S. Fish and Wildlife Service, 1011 E. Tudor Rd., Anchorage, Alaska, 99503. Applications may also be sent by telefax to 907/786–3625.

FOR FURTHER INFORMATION CONTACT: Ms. Karen Oakley at the above address (907/786–3579).

SUPPLEMENTARY INFORMATION:

Background

Thousands of bird and mammal carcasses were recovered following the grounding of the *T/V Exxon Valdez* on Bligh Reef in Prince William Sound, Alaska, on March 24, 1989. These carcasses have been stored in 5 freezer vans in Anchorage, Alaska, and held, until April 22, 1992, as evidence in the consolidated *Exxon Valdez* litigation. On April 22, 1992, the Federal District Court for Alaska issued Federal Court Order No. 77 excepting, on two conditions, these carcasses from the pre-trial order preserving evidence. Consistent with this order, the Service plans to dispose of the carcasses by incineration prior to September 30, 1992.

The Service has determined that the carcasses are not hazardous wastes as defined by the Resource Conservation and Recovery Act. As required by 40 CFR 262.11, a hazardous waste determination has been made and is on file with the Alaska Department of Environmental Conservation, Hazardous Waste Program, 410 Willoughby, Suite 105, Juneau, Alaska, 99801.

The Service has determined that incineration is the most appropriate means of disposing of the carcasses because incineration will render the waste non-toxic and non-putrescible and reduce the volume of material for ultimate disposal by an order of magnitude. Incineration of the carcasses is consistent with model waste management guidelines published by the American Veterinary Medical Association.

History and Condition of the Carcasses

Following the spill, fishermen and local residents under contract to Exxon and personnel from several government agencies were deployed in the spill area to retrieve dead birds and mammals. Most carcasses collected were transported to temporary morgues established in Valdez, Seward, Homer and Kodiak, Alaska. At the morgues, the carcasses were examined, placed in plastic bags and stored in freezer vans. Carcasses were collected from late March through mid-September, 1989. In the fall of 1989, the vans were transported to Anchorage, Alaska.

The "carcasses" include: Whole, intact carcasses; lightly to heavily scavenged carcasses; carcasses only consisting of bones; and single, identifiable parts, such as wings, legs, and skulls.

The degree of oiling on the carcasses varies. Some of the birds recovered, particularly those found later in the summer, were unoiled and were believed to have died from causes not directly related to the spill. The carcasses that were most likely to have been recovered without oiling were those of puffins, gulls and tubenoses.

At various times during the period of storage, the freezing units on the vans have failed, and the carcasses have been thawed and refrozen several times. Thus, all carcasses, even those that were originally recovered in fresh condition, have decomposed to some degree. In general, the carcasses, once thawed, will be highly putrescible and oily and will therefore require special handling by persons preparing the carcasses for preservation.

About 900 sea otter carcasses were recovered after the spill. In contrast to the birds, which were placed in the freezer vans after relatively cursory examination, each sea otter carcass was necropsied. Skulls from all otter carcasses, and the reproductive tracts of all female otters were removed.

Each of the five vans contains carcasses from a specific morgue and thus a specific geographic area, as follows: Valdez van—Prince William Sound; Seward van—Kenai Peninsula; Homer van—Barren Islands; 2 Kodiak vans—Kodiak Island and Alaska Peninsula. Because the oil moved from north to south, the morgues in the northern part of the spill area, the Valdez and Seward morgues, tend to contain birds collected during the early response to the spill, and the morgues in the southern part of the spill area, the Homer and Kodiak morgues, tend to contain birds collected later.

Generally, the bird carcasses were not placed in individual bags, and each bag typically contains from 5 to 30 carcasses frozen together. Labelling of the bags varies among the vans. Reconciling the number of carcasses logged into the morgues precisely with the number of carcasses in the bags is not possible because carcass parts from several locations or time periods were often placed together.

In the Homer and Seward vans, the bags of carcasses are stored in fish totes that are stacked two totes high. The bags in these vans are frozen together. In the other vans, the bags are simply piled on the floor. The bags are often frozen together and stuck to the floor. Because the carcasses in each bag and the bags of carcasses are frozen together, the vans will have to be thawed to allow sorting and further identification of the carcasses.

Species Available

The estimated number of bird carcasses of various species in the freezer vans is: Red-throated Loon *Gavia stellata*, 5; Pacific Loon *Gavia pacifica*, 18; Common Loon *Gavia immer*, 216; Yellow-billed Loon *Gavia adamsii*, 87; Unidentified loon *Gavia sp.*, 69; Horned Grebe *Podiceps auritus*, 277; Red-necked Grebe *Podiceps grisegena*, 120; Unidentified grebe, 65; Northern Fulmar *Fulmarus glacialis*, 426; Sooty Shearwater *Puffinus griseus*, 360; Short-tailed Shearwater *Puffinus tenuirostris*, 2,460; Unidentified shearwater, 579; Fork-tailed Storm-petrel *Oceanodroma furcata*, 363; Leach's Storm-petrel *Oceanodoma leucorhoa*, 12; Unidentified petrel *Oceanodroma sp.*, 69; Double-crested Cormorant *Phalacrocorax auritus*, 38; Pelagic Cormorant *Phalacrocorax pelagicus*, 418; Red-faced Cormorant *Phalacrocorax urile*, 161; Unidentified cormorant *Phlalcrocorax sp.*, 219; Great Blue Heron *Ardea herodias*, 1; Unidentified swan *Cygnus sp.*, 3; Emperor Goose *Chen canagica*, 2; Brant *Branta bernicla*, 3; Canada Goose *Branta canadensis*, 1; Green-winged Teal *Anas crecca*, 5; Mallard *Anas platyrhynchos*, 11; Northern Pintail *Anas acuta*, 4; Greater Scaup *Aythya marila*, 27; Lesser Scaup *Aythya affinia*, 2; Unidentified Scaup *Aythya sp.*, 4; Common Eider *Somateria mollissima*, 17; King Eider *Somateria spectabilis*, 9; Steller's Eider *Polysticta stelleri*, 4; Unidentified eider, 3; Harlequin Duck *Histrionicus histrionicus*, 213; Oldsquaw *Clangula hyemalis*, 185; Black Scoter *Melanitta nigra*, 132; Surf Scoter *Melanitta perspicillata*, 175; White-winged Scoter *Melanitta fusca*, 342; Unidentified scoter *Melanitta sp.*, 162; Common Goldeneye *Bucephala clangula*, 6; Barrow's Goldeneye *Bucephala islandica*, 33; Unidentified goldeneye, 25; Bufflehead *Bucephala albeola*, 21; Common Merganser *Mergus merganser*, 2; Red-breasted Merganser *Mergus serrator*, 33; Unidentified merganser, 3; Ruddy Duck *Oxyura jamaicensis*, 1; Unidentified seaduck, 112; Unidentified duck, 30; Bald Eagle *Haliaeetus leucocephalus*, 125; Peregrine Falcon *Falco peregrinus*, 2; Unidentified raptor, 7; Willow Ptarmigan *Lagopus lagopus*, 1; Sandhill Grane *Crus canadensis*, 2; Lesser Golden-Plover *Pluvialis dominica*, 1; Black Oystercatcher *Haematopus bachmani*, 9; Lesser Yellowlegs *Tringa flavipes*, 2; Unidentified turnstone *Arenaria sp.*, 1; Surfbird *Aphriza virgata*, 3; Selmipalmated Sandpiper *Calidris pusilla*, 1; Western Sandpiper *Calidris mauri*, 5; Least Sandpiper *Calidris minutilla*, 4; Baird's Sandpiper *Calidris bairdii*, 1; Short-billed Dowitcher *Limnodromus griseus*, 1; Common Snipe *Gallinago gallinago*, 1; Red-necked Phalarope *Phalaropus lobatus*, 7; Red Phalarope *Phalaropus fulicaria*, 2; Unidentified sandpiper, 11; Long-tailed Jaeger *Stercorarius longicaudus*, 1; Mew Gull *Larus canus*, 33; Herring Gull *Larus argentatus*, 8; Glaucous-winged Gull *Larus glaucescens*, 555; Unidentified gull, 99; Black-legged Kittiwake *Rissa tridactyla*, 1,225; Arctic Tern *Sterna paradisaea*, 3; Aleutian Tern *Sterna aleutica*, 1; Common Murre *Uria aalge*, 10,428; Thick-billed Murre *Uria lomvia*, 669; Unidentified murre *Uria sp.*, 8,851; Pigeon Guillemot *Cepphus columba*, 614; Marbled Murrelet *Brachyramphus marmoratus*, 612; Kittlitz's Murrelet *Brachyramphus brevirostris*, 67; Ancient Murrelet *Synthliboramphus antiquus*, 311; Unidentified murrelet, 413; Cassin's Auklet *Ptychoramphys aleuticus*, 48; Parakeet Auklet *Cyclorrhynchus psittacula*, 31; Least Auklet *Aethia pusilla*, 5; Rhinoceros Auklet *Cerorhinca monocerata*, 141; Tufted Puffin *Fratercula cirrhata*, 361; Horned Puffin *Fratercula corniculata*, 139; Unidentified puffin, 46; Unidentified alcid, 173; Great-horned Owl *Bubo virginianus*, 3; Unidentified owl, 1; Unidentified woodpecker, 1; Violet-green Swallow *Tachycineta thalassina*, 1; Cliff Swallow *Hirundo pyrrhonota*, 3; Steller's Jay *Cyanocitta stelleri*, 1; Black-billed Magpie *Pica pica*, 7; Northwestern Crow *Corvus caurinus*, 34; Common Raven *Corvus corax*, 18; Hermit Thrush *Catharus guttatus*, 1; American Robin *Turdus migratorius*, 2; Varied Thrush *Ixoreus naevius*, 1; yellow Warbler *Dendroica petechia*, 3; Unidentified warbler, 1; Savannah Sparrow *Passerculus sandwichensis*, 1; Golden-crowned Sparrow *Zonotrichia atricapilla*, 4; Unidentified sparrow, 15; Pine Grosbeak *Pinicola enucleator*, 1; White-winged Crossbill *Loxia leucoptera*, 8; Unidentified passerine, 9; Unidentified bird, 2,927.

Applicants are advised that, based on a study of the bird carcasses in the Kodiak morgue vans, about 2 percent of the bird carcasses were misidentified, and about 11 percent of the bird carcasses could have been identified to a higher taxonomic level (Ecoloical Consulting Inc., 2735 NE Weidler Street, Portland OR, June 1991, Assessment of Direct Seabird Mortality in Prince William Sound and the Western Gulf of Alaska Resulting from the *Exxon Valdez* Oil Spill, 153 pp + appendices).

The estimated number of mammal carcasses in the freezer vans is: sea otter *Enhydra lutris*, 900; sitka black-tailed deer *Odocoileus hemionus*, 1; steller sea lion Eumatopias jubatus, 1; harbor seal *Phoca vitulina*, 1.

Applicant Requirements

The Service shall only donate carcasses to parties that meet the following requirements:

(a) Applicants must demonstrate the ability to provide adequate care and security for the carcasses, including

(1) The applicant shall be present in Anchorage, Alaska, at the incineration facility to sort and identify desired carcasses at the time the carcasses are being thawed prior to incineration;

(3) The applicant shall properly transport selected carcasses from Anchorage to the applicant's location, including

(i) The applicant shall ensure that thawed and partially thawed carcasses are refrozen prior to transport;

(ii) The applicant shall properly label and package carcasses for transport;

(iii) The applicant shall arrange for and prepay the costs of shipping by a same-day air freight carrier, if carcasses are to be transported outside of Alaska;

(3) The applicant shall properly store the carcasses prior to any work required to prepare the carcasses for scientific, educational or public display use;

(4) The applicant shall appropriately dispose of oily wastes generated by preparing or handling the carcasses;

(5) The applicant shall appropriately handle and dispose of putrescible and possibly pathogenic waste generated by preparing or handling the carcasses;

(6) The applicant shall pay all costs associated with the transfer of the carcasses.

(b) Applicants shall sign a waiver relieving the Service of liability

stemming from donation of the carcasses by the Service to the applicant.

(c) Applicants shall demonstrate that the carcasses donated to them will be used for scientific, educational or public display purposes.

(d) Applicants shall provide a list, in phylogenetic order, of the species desired by the applicant which shows the approximate number of carcasses of each species desired.

(e) Applicants shall cooperate with other qualified donees to agree upon an amicable method of distributing carcasses among the qualified donees.

(f) Applicants shall submit their applications to the Service no later than September 10, 1992.

Application Procedure

Persons interested in obtaining carcasses must submit an application to the Service at the address listed above no later than September 10, 1992. Application forms are available from the Service at the address listed above. Applicants may apply using the application form provided by the Service or by submitting a letter that provides information demonstrating that the applicant meets the requirements for donees listed above. Applications may be sent by mail or telefax.

Additional Information

The Service will allow qualified donees to use the freezer vans for refreezing of thawed or partially thawed carcasses prior to the transport.

The exact date that the disposal process will begin is dependent on contract negotiations with the vendor that will be providing incineration services. However, the disposal process is expected to begin no sooner than August 1, 1992 and no later than September 1, 1992. The entire disposal process, including sorting and identification of salvageable carcasses and incineration of the remaining carcasses, is expected to be completed by September 30, 1992.

Applicants interested in obtaining the steller sea lion, the harbor seal and any other pinnipeds found in the freezer vans are advised that the approval of the National Marine Fisheries Service is required. Interested applicants are advised to contact Dr. Steven T. Zimmerman, Chief, Office of Marine Mammals and Endangered Species, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska, 99802–1668, 907/586–7233, for specific information.

Applicants interested in obtaining bird carcasses are advised that a Migratory Bird Permit under 50 CFR 21.1–21.46 may be required. Any applicant that is not specifically exempted from the permit requirements by 50 CFR 21.12 will need to obtain a Migratory Bird Permit to become a qualified donee.

Authority: The authority of this action is 50 CFR 12.30–12.39.

Dated: June 25, 1992.

David B. Allen,

Acting Regional Director.

[FR Doc. 92–18981 Filed 8–10–92; 8:45 am]

BILLING CODE 4310-55-M

Availability of a Draft Recovery Plan for the Sacramento Mountains Thistle for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Ntice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the Sacramento Mountains thistle (*Cirsium vinaceum*) which the Service listed as a threatened species on June 16, 1987 (52 FR 22936). The plant, the Sacramento Mountains thistle, occurs in the Sacrament Mountains, Otero County, New Mexico. There are 62 known populations, primarily distributed on the Lincoln National Forest, with several on The Mescalero Apache Indian Reservation and on private land. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before September 25, 1992, to receive consideration by the Service.

ADDRESSES: Persons wishing to review the raft recovery plan may obtain a copy by contacting the U.S. Fish and Wildlife Service, 3530 Pan American, NE., suite D, Albuquerque, New Mexico 87107. Written comments and materials regarding the plan should be addressed to the Field Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Anne Cully, U.S. Fish and Wildlife Service Botanist; telephone (505) 883–7877 or at the above address.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened plant or animal to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the Service's endangered species program. The help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe site specific management actions considered necessary for conservation and survival of the species, establish objective measurable criteria for the recovery levels for downlisting or delisting species, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988 requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The Sacramento Mountains thistle is a threatened plant species occurring only on wet deposits of travertine (calcium carbonate) at 62 springs and streams in the Sacramento Mountains of south-central New Mexico. Major threats to the continued existence and recovery of this species include water development, land use impacts from grazing, road building, recreation, logging, and the invasion of exotic plants.

The Sacramento Mountains thistle recovery plan has been reviewed by the appropriate Service staff in Region 2 and experts on the species. The plan will be finalized and approved following incorporation of comments and materials received during this comment period.

Public Comment Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to the approval of the plan.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: July 30, 1992.

Lynn B. Starnes,

Regional Director.

[FR Doc. 92–18979 Filed 8–10–92; 8:45 am]

BILLING CODE 4310-55-M

Availability of the Draft Environmental Assessment and Land Protection Plan and Proposed Establishment of Mandalay National Wildlife Refuge Terrebonne Parish, LA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of the draft environmental assessment and land protection plan for the proposed establishment of Mandalay National Wildlife Refuge.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service, Southeast Region, proposes to establish a national wildlife refuge in the vicinity of Terrebonne Parish, Louisiana. The purpose of the proposed refuge is to protect and manage approximately 15,000 acres of nationally significant freshwater marshes and wetlands in the Bayou Penchant Basin of southcentral Louisiana for the benefit of migratory waterfowl and other wildlife. A Draft Environmental Assessment and Land Protection Plan for the proposed refuge has been developed by Service biologists in coordination with the Louisiana Department of Wildlife and Fisheries, the U.S. Army Corps of Engineers, The Nature Conservancy, and other federal and state agencies and private conservation organizations. The assessment considers the biological, environmental, and socioeconomic effects of establishing the refuge. The assessment also evaluates five alternative actions and their potential impacts on the environment. Written comments or recommendations concerning the proposal are welcomed, and should be sent to the address below.

DATES: Land acquisition planning for the project is currently underway. The draft assessment will be available to the public for review and comment on August 14, 1992. Written comments must be received no later than September 28, 1992, to be considered.

ADDRESSES: Comments and requests for copies of the assessment and further information should be addressed to Mr. Charles R. Danner, Chief, Branch of Project Development, Office of Refuges and Wildlife, U.S. Fish and Wildlife Service, 75 Spring Street, S.W., room 1240, Atlanta, Georgia 30303.

SUPPLEMENTARY INFORMATION: The primary objectives of the proposed refuge are to provide (1) wintering habitat for migratory waterfowl, (2) production habitat for wood ducks and mottled ducks, (3) habitat for a natural diversity of wildlife, (4) habitat for nongame migratory birds, (5) habitat for threatened and endangered species, and (6) opportunities for environmental education, interpretation, and wildlife-oriented recreation. The proposed refuge would also serve as a focal point for the overall protection and management of the Bayou Penchant Basin in cooperation with other federal and state agencies, conservation organizations, and the private sector.

The proposed refuge area is located in Terrebonne Parish, Louisiana, about 5 miles west of Houma and 20 miles east of Morgan City. The proposed area is bisected by the Gulf Intracoastal Waterway and lies south of the Bayou Black Ridge between Houma and Morgan City near U.S. Highway 90. Three major oil and gas fields are located within the boundary of the proposed refuge.

The area's biological diversity is high. Thousands of migratory waterfowl are attracted to the area's freshwater marshes, including mallard, blue- and green-winged teal, gadwalls, wigeons, and mottled ducks. Wood ducks are common, both as migrants and breeders, and mottled ducks commonly nest throughout the area. American coots heavily use this part of coastal Louisiana, as do several other species of rails and gallinules. Pintails, lesser scaups, geese, and shovelers also winter in the area. It is not uncommon for this area to reach peaks of 75,000 or more ducks.

In addition, the proposed refuge area provides critical spring and fall habitat for neotropical migratory birds. Wading birds also use the area in significant numbers and several rookeries are present. One major rookery consists of several thousand pairs of white ibis, great egrets, little blue herons, snowy egrets, and tricolored herons. A few roseate spoonbills also nest in the area.

Bald eagles use the proposed refuge heavily and at least four active nests have been documented. One nest near Hansons Canal in the proposed refuge area fledged two young in 1989. The proposed refuge area represents the primary core nesting area for bald eagles west of Florida. The area's marshes also support high populations of other wildlife, including nutria, alligators, and white-tailed deer. Freshwater fishing for largemouth bass, crappie, and catfish is popular in the canals and open water areas.

The draft environmental assessment was developed by the Service in consultation with representatives from the Louisiana Department of Wildlife and Fisheries, The Nature Conservancy, the U.S. Army Corps of Engineers, Ducks Unlimited, the USDA Soil Conservation Service, the Environmental Protection Agency, and the National Marine Fisheries Service. The biological, environmental, and socioeconomic effects of acquiring approximately 15,000 acres of freshwater marshes and wetlands for the establishment of the refuge have been considered. Five alternatives and their potential impacts on the environment are presented and evaluated. The Service believes the preferred alternative, Protection and Management of Approximately 15,000 Acres by the U.S. Fish and Wildlife Service, is a positive step in preserving a nationally significant wetland ecosystem for the benefit of migratory waterfowl, neotropical migrant birds, endangered species, and other native wildlife.

Dated: July 17, 1992.

John R. Eadie,

Acting Regional Director.

[FR Doc. 92-18980 Filed 8-10-92; 8:45 am]

BILLING CODE 4310-55-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-623 (Preliminary)]

Hairbrushes and Certain Parts and Components Thereof From the People's Republic of China

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a preliminary antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731-TA-623 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded by reason of imports from the People's Republic of China of hairbrushes [1] and certain parts and

[1] For purposes of this investigation, "hairbrushes" consists of hairbrushes for use on the person, provided for in subheadings 9603.29.40 and 9603.29.80 of the Harmonized Tariff Schedule of the United States (HTS). The subject merchandise includes, but is not limited to, hairbrushes imported

Continued

components thereof [2] that are alleged to be sold in the United States at less than fair value. The Commission must complete preliminary antidumping investigations in 45 days, or in this case by September 17, 1992.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: August 3, 1992.

FOR FURTHER INFORMATION CONTACT: Jonathan Seiger (202–205–3183), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted in response to a petition filed on August 3, 1992, by Goody Products, Inc., Kearny, NJ.

Participation in the Investigation and Public Service List

Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven (7) days after publication of this notice in the **Federal Register.** The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this preliminary investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than seven (7) days after the publication of this notice in the **Federal Register.** A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on August 24, 1992, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Jonathan Seiger (202–205–3183) not later than August 20, 1992, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before August 27, 1992, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony c9ontain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules.

Issued: August 6, 1992.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92–19039 Filed 8–10–92; 8:45 am]

BILLING CODE 7020–02–M

from the People's Republic of China in single units, in sets (e.g., brush and comb sets packaged together), or in kits.

[2] "Certain parts and components thereof" consists of handles, pads, and molded bristles, however provided for in the HTS, that may be imported separately for use in the domestic manufacture or assembly of hairbrushes, excluding natural bristles or extruded synthetic bristles imported separately.

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32111]

The Indiana & Ohio Central Railroad Co., Inc.—Trackage Rights Exemption—South Charleston Railroad Co; Exemption

South Charleston Railroad Company (SCRR) has agreed to grant local trackage rights to The Indiana & Ohio Central Railroad Company, Inc. (IOCR) over 1.08 miles of line between milepost 35.00 and milepost 36.08 in South Charleston, OH, that SCRR is acquiring from Consolidated Rail Corporation (Conrail).[1] The trackage rights will enable IOCR to serve Clark-Landmark, Inc., a shipper of agricultural commodities located on the 1.08-mile segment, facilitating the routing of its traffic, inbound and outbound, for prior or subsequent movement over the lines of Conrail and other class I rail carriers. The transaction was to be consummated on or about July 31, 1992.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Robert L. Calhoun, 1025 Connecticut Avenue, suite 1000, Washington, DC 20036.

As a condition to use of this exemption, any employees adversely affected by the trackage rights will be protected pursuant to Norfolk and Western Ry. Co.—Trackage Rights—BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.—Lease and Operate, 360 I.C.C. 653 (1980), as clarified in Wilmington Term. RR, Inc.—Pur & Lease—CSX Transp., Inc., 6 I.C.C.2d 799 (1990), *aff'd sub nom. Railway Labor Executives' Ass'n* v. *ICC*, 930 F.2d 511 (6th Cir. 1991).

Dated: August 5, 1992.

[1] On July 24, 1992, SCRR filed a notice of exemption under 49 CFR 1150.31 to acquire the segment from Conrail. See Finance Docket No. 32110, South Charleston Railroad Co.—Acq. Exemption—Consolidated Rail Corp. Line in South Charleston, OH.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-19052 Filed 8-10-92; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 32110]

South Charleston Railroad Co.; Acquisition Exemption, Consolidated Rail Corporation Line in South Charleston, OH

South Charleston Railroad Company (SCRR) has filed a notice of exemption to acquire approximately 1.08 miles of Consolidated Rail Corporation's Exenia Secondary Track. The segment extends between milepost 35.00 and milepost 36.08 in South Charleston, Clark County, OH. Currently a noncarrier, SCRR will become a class III carrier upon consummation of the transaction, which was to have occurred on or about July 31, 1992.

The segment to be acquired by SCRR will be operated by The Indiana & Ohio Central Railroad Company (IOCR), a subsidiary of Indiana & Ohio Rail Corp. IOCR has filed a notice of exemption in Finance Docket No. 32111, The Indiana & Ohio Central Railroad Company, Inc.—Trackage Rights Exemption—South Charleston Railroad Company, with regard to the operation.

Any comments must be filed with the Commission and served on: Thomas F. McFarland, Jr., Belnap, Spencer, McFarland & Herman, 225 W. Washington Street, 15th Floor, Chicago, IL 60606-3418.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: August 5, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-19053 Filed 8-10-92; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 32082]

South Kansas and Oklahoma Railroad Inc.—Lease Exemption—the Atchison, Topeka and Santa Fe Railway Co.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Pursuant to 49 U.S.C. 10505, the Commission exempts from the prior approval requirements of 49 U.S.C. 11343, *et seq.*, the assignment to South Kansas and Oklahoma Railroad, Inc., by the Atchison, Topeka and Santa Fe Railway Company of its lease with the Port of Catoosa Facilities Authority for a 7.3-mile line of railroad between Owasso and Catoosa, OK. The exemption is subject to standard employee protective conditions.

DATES: The exemption is effective on August 21, 1992. Petitions for stay must be filed by August 18, 1992 and petitions to reopen must be filed by August 31, 1992.

ADDRESSES: Send pleadings referring to Finance Docket No. 32082 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representatives: A. J. Wachter, 506 North Pine, Post Office Box V, Pittsburg, KS 66762; and Karl Morell, or Louis E. Gitomer Suite 210, 919 18th Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927-5660, (TDD for hearing-impaired: (202) 927-5721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. (Assistance for the hearing-impaired is available through TDD services (202) 927-5721).

Decided: August 3, 1992.

By the Commission, chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett. Commissioner Emmett did not participate in the disposition of this proceeding.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-19054 Filed 8-10-92; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *Copenhagen* v. *United States of America*, No. CIV-90-0755L (W.D.N.Y.), has been lodged with the United States District Court for the Western District of New York.

The proposed Consent Decree concerns alleged violations of the Clean Water Act, 33 U.S.C. 1311, as a result of the alleged unlawful discharge of pollutants on or near the shore of Lake Ontario, in Greece, New York, constituting "waters of the United States." The proposed Consent Decree also concerns alleged violations of the Rivers and Harbors Act, 33 U.S.C. 403, as a result of the alleged unlawful placement of structures and fill in Lake Ontario, in Greece, New York, constituting "navigable waters." The Consent Decree requires Plaintiff and Counterclaim-Defendant, Paul H. Copenhagen, to pay a $5,000 civil penalty, remove all steel framework in place below the "Settlement Line" agreed to by the parties, and dispose of all materials removed from the site at an upland location removed from navigable waters and waters of the United States.

The Department of Justice will receive, for a period of thirty (30) days from the date of publication of this notice, written comments relating to the proposed Consent Decree. Comments should be addressed to the Acting Assistant Attorney General, Environment and Natural Resources Division, Dpartment of Justice, Attention: Joshua M. Levin, P.O. Box 23986, Washington, DC 20026-3986 and should refer to *Compenhagen* v. *United States of America*, DJ Reference No. 90-5-1-1-4008.

The Consent Decree may be examined at the Clerk's Office, United States District Court, 282 U.S. Courthouse, 100 State Street, Rochester, New York 14614.

Vicki A. O'Meara,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 92-18984 Filed 8-10-92; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984—Petroleum Environmental Research Forum

Notice is hereby given that, on July 17, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301, *et seq.* ("the Act"), the Petroleum Environmental Research Forum ("PERF") filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in the membership of PERF. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, the notification stated that Alberta Energy Company Ltd., Alberta, CANADA and Sun Refining & Marketing Co., Wallingford, PA have terminated their membership in PERF.

No other changes have been made in either the membership or planned activities of PERF.

On February 10, 1986, PERF filed its original notification pursuant to section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 14, 1986 (51 Fed. Reg. 8903). On May 6, 1986, May 27, 1986, June 23, 1986, February 3, 1989, March 21, 1989, October 31, 1989, April 19, 1990, June 25, 1990, May 13, 1991, August 29, 1991, and April 3, 1992, PERF filed additional written notifications. The Department published notices in the **Federal Register** in response to these additional notifications on June 9, 1986 (51 FR 20897), June 19, 1986 (51 FR 22365), July 17, 1986 (51 FR 25957), March 1, 1989 (54 FR 8607), April 20, 1989 (54 FR 16014), December 8, 1989 (54 FR 50661), May 30, 1990 (55 FR 21951), July 19, 1990 (55 FR 29432), June 20, 1991 (56 FR 28416), September 25, 1991 (56 FR 48581, and May 6, 1992 (57 FR 19443), respectively.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92-18986 Filed 8-10-92; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984 Investigation of the Potential Effects of Lubricating Oil on Diesel Flowthrough Catalysts

Notice is hereby given that, on June 30, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301, *et seq.* ("the Act"), Southwest Research Institute ("SwRI") filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing the addition of two parties to its group research project regarding "Investigation of the Potential Effects of Lubricating Oil on Diesel Flowthrough Catalysts." The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, SwRI advised that Ford Motor Company, Dearborn, MI (effective March 19, 1992), and PSA Etudes ET Recherches and Peugot S.A., Paris, FRANCE (effective May 12, 1992) have become parties to the group research project.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and SwRI intends to file additional written notification disclosing all changes in membership.

On July 26, 1991, SwRI filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on August 29, 1991, 56 FR 42758-42759.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92-18987 Filed 8-10-92; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984—"Feasibility Study on Using Molecular Sieves for Diesel NO_x Control"

Notice is hereby given that, on July 2, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Southwest Research Institute ("SwRI") filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing the addition of a party to its project entitled "Feasibility Study on Using Molecular Sieves for Diesel NO_x Control". The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, SwRI advised that Ford Motor Company, Dearborn, MI (effective March 25, 1992) has become a party to the project.

No other changes have been made in either the membership or planned activity of the project.

On July 1, 1991, SwRI filed its original notification pursuant to section 6(a) of the Act. The Department of Justice ("The Department") published a notice in the **Federal Register** pursuant to section 6(b) of the Act of July 29, 1991, 56 FR 35887. On September 19, 1991, SwRI filed an additional written notification. The Department published a notice in the **Federal Register** in response to the additional notification on November 5, 1991, 56 FR 56528. On November 25, 1991, SwRI filed an additional written notification. The Department published a notice in the **Federal Register** in response to the additional notification on January 14, 1992, 57 FR 1493-1494. On February 28, 1992, SwRI filed an additional written notification. The Department published a notice in the **Federal Register** in response to the additional notification on April 23, 1992, 57 FR 14850-14851. On May 7, 1992, SwRI filed an additional written notification. The Department published a notice in the **Federal Register** in response to the additional notification on June 11, 1992, 57 FR 24817. Additionally, a correction notice to the November 5, 1991, notice was published on December 17, 1991, 56 FR 65541.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92-18988 Filed 8-10-92; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984—"United States Automotive Manufacturers Crash Test Dummy Consortium"

Notice is hereby given that, on July 7, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), General Motors Corporation filed written notification simultaneously with the Attorney General and the Federal Trade Commission of a joint venture entitled "United States Automotive Manufacturers Crash Test Dummy Consortium." The notification discloses (1) the identities of the parties to the venture, and (2) the nature and objectives of the venture. The notification was filed for the purpose of involving the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the joint venture and its general areas of planned activities are: Chrysler Corporation, Highland Park, MI; Ford Motor Company Dearborn, MI; and General Motors Corporation, Detroit, MI.

The parties intend to identify opportunities for joining aspects of their independent research and development efforts pertaining to crash test dummies and related areas such as modelling, instrumentation, data management and reduction and test dummy subsystem safety test development. The objectives are to avoid inefficient duplication of effort and expense while conducting or directing research in this area; collect, exchange, and, where appropriate, license or otherwise disseminate the results of the research; work closely with various governmental and private agencies; and perform further acts allowed by the National Cooperative

Research Act that would advance the joint venture's objectives.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92-18985 Filed 8-10-92; 8:45 am]

BILLING CODE 4410-01-M

National Institute of Corrections

Announcement of Grants, Services, and Training

The National Institute of Corrections (NIC), U.S. Department of Justice, has published its Annual Program Plan for Fiscal Year 1993. The document describes the grants, programs, and services to be made available to the corrections field during the next fiscal year, which begins October 1, 1992 and ends September 30, 1993.

A separate document, the Schedule of Training and Services for Fiscal Year 1993, describes NIC's training programs and services to be conducted by its National Academy of Corrections for state and local corrections practitioners.

Both documents contain relevant application forms and may be obtained by contacting the National Institute of Corrections, 320 First Street, NW., Washington, DC 20534 (telephone 202-307-3106; fax 202/307-3361); or the NIC Logmont, Colorado, offices (1960 Industrial Circle, suite A, Longmont, Colorado 80501) (telephone 303/682-0382; fax 303/682-0469); TDD 202/307-3156.

M. Wayne Huggins,

Director.

[FR Doc. 92-18989 Filed 8-10-92; 8:45 am]

BILLING CODE 4410-36-M

DEPARTMENT OF LABOR

Employment and Training Administration

Emergency Unemployment Compensation; General Administration Letter for Implementing Title I of the Emergency Unemployment Compensation Act of 1991

On November 15, 1991, the President signed into law the Emergency Unemployment Compensation Act of 1991 (Pub. L. 102-164), which is Title I created the Emergency Unemployment Compensation (EUC) program. On December 4, 1991, the President signed into law Pub. L. 102-182, which provided amendments to the Emergency Unemployment Compensation Act of 1991, as if such amendments were included in that Act, as of its effective date (weeks of unemployment beginning on and after November 17, 1991). On February 7, 1992, the President signed into law Pub. L. 102-244, further amending the Emergency Unemployment Compensation Act of 1991, effective for weeks of unemployment beginning after the date of enactment. Only July 3, 1992, the President signed into law Pub. L. 102-318, which not only amended the Emergency Unemployment Compensation Act of 1991, but the Federal-State Extended Unemployment Compensation Act of 1970, which amended provisions are applicable to the EUC program. With certain exceptions, the amendments are effective for weeks of unemployment beginning after July 3, 1992.

In its role as principal in the EUC program, the Department of Labor issued controlling guidance for the States and cooperating State agencies in the operating instructions set forth in the Attachments to GAL 4-92, dated November 27, 1991. Based on issues raised by the States and cooperating State agencies, GAL 4-92, Change 1 was issued February 10, 1992, providing changes to, and clarifications of, the operating instructions set forth in the Attachments to GAL 4-92. In order to assure knowledge to the public of these operating instructions, both of these documents were published in the Federal Register on February 14, 1992 (57 FR 5472).

GAL 4-92, Change 2 was issued February 13, 1992, providing changes to the operating instructions set forth in the Attachments to GAL 4-92 because of the amendments enacted February 7, 1992 (Pub. L. 102-244). GAL 4-92, Change 2 was published in the Federal Register on March 11, 1992 (57 FR 8683).

GAL 4-92, Change 3 was issued June 4, 1992, which revised Section III.M., Fraud and Overpayment., in Attachment A to GAL 4-92. Changes and clarifications were needed in order to assure uniform application of the provisions by the States and cooperating State agencies. GAL 4-92, Change 3 was published in the Federal Register on June 24, 1992 (57 FR 28188).

GAL 4-92, Change 4 was issued on July 9, 1992, providing substantive changes in the operating instructions set forth in Attachments A, B, and C to GAL 4-92 because of the amendments enacted July 3, 1992 (Pub. L. 102-318).

Therefore, GALs 4-92; 4-92, Change 1; 4-92, Change 2; 4-92, Change 3; and 4-92, Change 4 (or any subsequent or supplemental operating instructions) provide the essential operating instructions to the States, which administer the EUC program pursuant to agreements between the States and the Secretary of Labor.

Since the States and cooperating State agencies may not vary from the operating instructions in GALs 4-92; 4-92, Change 1; 4-92, Change 2; 4-92, Change 3; and 4-92, Change 4 (or any subsequent or supplemental operating instructions) without the prior approval of the Department of Labor, GAL 4-92, Change 4 is published below as a continuation of assuring public notification of the required procedures.

Signed at Washington, DC, on August 4, 1992.

Roberts T. Jones,

Assistant Secretary of Labor.

Classification: UI/EUC.

Correspondence Symbol: TEUMI.

Date: July 9, 1992.

Directive: General Administration Letter No. 4-92, Change 4.

To: All State Employment Security Agencies.

From: Donald J. Kulick, Administrator for Regional Management.

Subject: Emergency Unemployment Compensation Act of 1991, As Amended by Public Law 102-318 (H.R. 5260).

1. *Purpose.* To provide amended operating instructions for States and State employment security agencies (SESAs) for the administration of the provisions of Title I of the "Emergency Unemployment Compensation Act of 1991", as amended by Public Law 102-318, the "Unemployment Compensation Amendments of 1992" (which was enacted into law with the President's signature on July 3, 1992).

2. *References.* Title I of the "Emergency Unemployment Compensation Act of 1991", Public Law 102-164, as amended by Public Law 102-182, Public Law 102-244, and the "Unemployment Compensation Amendments of 1992" (Public Law 102-318); the Federal-State Extended Unemployment Compensation Act of 1970 (the EB Act), as amended by the "Unemployment Compensation Amendments of 1992" (Public Law 102-318); 20 CFR part 615; GAL 4-92 and Changes; UIPL 9-92 and Changes; the Trade Act of 1974 (19 U.S.C. 2271 et seq.); 20 CFR part 617; and GAL 10-92.

3. *Background.* a. *Amendment of the Act.* Title I of the "Emergency Unemployment Compensation Act of 1991" created the Emergency Unemployment Compensation (EUC) program. The "Unemployment Compensation Amendments of 1992" (Public Law 102-318), enacted on July 3, 1992, amended a number of the provisions of Title I of the EUC Act. These amendments and the various

effective dates of the amendments to the EUC program are described in the Attachments to this GAL. The Employment and Training Administration issued controlling guidance for the States and State agencies in operating instructions in GAL 4–92, dated November 27, 1991; GAL 4–92, Change 1, dated February 10, 1992; GAL 4–92, Change 2, dated February 13, 1992; and GAL 4–92, Change 3, dated June 4, 1992.

Based on the enactment of Public Law 102–318, this Change 4 to GAL 4–92 includes changes to, and clarifications of, the operating instructions set forth in the Attachments to GAL 4–92.

b. *Key Changes to the EUC Program in the Amendments.* Public Law 102–318, provides for the following changes to the EUC program:

(1.) *Extension of the Program.* Section 101(a) of Public Law 102–318 amends Sections 102(f)(1) and 106(a)(2) of the EUC Act to extend the EUC from July 4, 1992, to March 6, 1993. This extension is effective for weeks of unemployment beginning after June 13, 1992.

(2.) *Weeks of Benefits during the Extension.* Section 101(b) of Public Law 102–318 amends Section 102(b)(2)(A) of the EUC Act to provide, for new EUC claims effective for weeks beginning after June 13, 1992, a maximum of 20 or, in the case of a State triggered "on" a "high unemployment period," a maximum of 26 weeks of EUC through a week of unemployment including March 6, 1993. New claims effective prior to June 13, 1992, remain or are redetermined to the applicable limit (i.e., up to 26 or 33 weeks).

Section 101(b) of Public Law 102–318 also provides for reductions in the maximum number of weeks of EUC payable (new claims) when the average rate of total unemployment (seasonally adjusted) for all States declines to less than 7.0 percent and less than 6.8 percent but eliminates the two requirements of consecutive weeks of entitlement for a continuing claimant to avoid reduction of the maximum number of weeks of EUC entitlement.

(3.) *Modification of EUC Program Phase-out.* Section 101(c) of Public Law 102–318 amends Section 102(f)(2) of the EUC Act to provide that the transition period for the phase-out of the EUC program will be from the first week beginning after March 6, 1993, to the week ending on June 19, 1993, and that no EUC will be payable for any week beginning after June 19, 1993.

(4.) *Effect of Extended Benefits (EB) during the EUC Program Phase-out Period.* Section 101(d) of Public Law 102–318 amends Section 101(e) of the EUC Act to provide that the Governor's election to trigger "off" EB in a State in order to provide for the payment of EUC is not applicable with respect to any EB period beginning after March 6, 1993. Section 101(d) further amends Section 101(e) of the EUC Act to provide that an individual in a State that is triggered "on" for EB after March 6, 1993, and who has a balance of EUC entitlement remaining after March 6, 1993, shall receive payments under the program (EUC or EB) in which the individual's entitlement is greater. This amendment is effective for weeks of employment beginning after March 6, 1993.

(5.) *Effect of Subsequent Entitlement to Regular Compensation.* Section 102(a) of Public Law 102–318 amends Section 101 of the EUC Act by adding a new subsection (f) providing that an individual's rights to EUC shall be determined without regard to regular compensation for a subsequent benefit year if such individual does not file a claim for regular compensation for such subsequent benefit year. This amendment is effective for weeks of unemployment beginning after July 3, 1992.

(6.) *Recovery of Certain Overpayments (Section 102(b) (2) (A) of Public Law 102–318).* Section 102(b)(2)(A) of Public Law 102–318 provides that, on and after July 3, 1992, no repayment of any outstanding EUC overpayment shall be required under Section 105 of the EUC Act if the individual would have been entitled to EUC had the amendment in paragraph 5. above been in effect for all weeks since the beginning of the EUC program.

(7.) *Waiver of Rights to Certain Regular Benefits.* Section 102(b)(2)(B) of Public Law 102–318 provides that certain individuals may elect to defer their rights to regular compensation in a subsequent benefit year until they have exhausted their rights to EUC in respect of the previous benefit year. This section is effective for weeks of unemployment beginning after July 3, 1992.

(8.) *Persian Gulf Reservists.* Section 104 of Public Law 102–318 provides that certain Persian Gulf Reservists called-up to active duty in a reserve status shall be entitled to receive an EUC weekly benefit amount not less than the weekly amount of the reservist's claim for regular compensation, EB, or trade readjustment allowances during the week of call-up to active duty.

(9.) *Earnings Test.* Section 202(a)(1) of Public Law 102–318 amends Section 202(a) (5) of the EB Act to provide that States shall provide which one or more of the three specified methods of measuring employment and earnings for EB (and EUC) qualifying purposes shall be used in that State. The effective date of this amendment is for weeks of unemployment beginning on or after July 3, 1992, "[n]otwithstanding any other provision of law."

(10.) *Recovery of Certain Overpayments (Section 202(a)(2)(B) of Public Law 102–318.* Section 202I(a)(2)(B) of Public Law 102–318 provides that on and after July 3, 1992, no repayment of any outstanding EUC overpayment shall be required under Section 105 of the EUC Act if the individual would have been entitled to EUC had the amendment in paragraph 9. above been in effect for all weeks since the beginning of the EUC program.

(11.) *Suspension of Certain EB Eligibility Requirements.* Section 202(b) of Public Law 102–318 suspends the requirements of EB work search (including suitable work) provisions and the EB reemployment requirement to purge certain disqualifications (Sections 202(a) (3) and (4) of the EB Act). These suspensions are effective for weeks of unemployment beginning after March 6, 1993, and before January 1, 1995, and no provision of State law in conformity with paragraphs (3) and (4) of Section 202(a) of the EB Act shall be applied during the period of suspension. This provision of Public Law 102–318 is applicable to EUC claimants for weeks of unemployment beginning after March 6, 1993, and before June 19, 1993.

c. *Controlling Guidance.* The provisions in Titles I and II of Public Law 102–318, as interpreted in these operating instructions, supersede the prior provisions of Federal law, regulations at 20 CFR Parts 615 and 617, and prior operating instructions issued by this Department to the extent that they are inconsistent with Titles I and II of Public Law 102–318 or these operating instructions.

The operating instructions in GAL 4–92, GAL 4–92, Change 1, Change 2, Change 3, and this Change 4 (including Attachments A, B, and C) are issued to the States and the cooperating State agencies and constitute the controlling guidance provided by the Department of Labor in its role as the principal in the EUC program. As agents of the United States, the States and the cooperating State agencies may not vary from the operating instructions in GAL 4–92 and GAL 4–92, Change 1, Change 2, Change 3, or this Change 4 (or any subsequent or supplemental operating instructions) without the prior approval of the Department of Labor.

d. *State Agreements.*

The EUC agreement entered into pursuant to P.L. 102–164 (as modified) between a State and the Secretary of Labor under which the State agency

makes payments of EUC in accordance with the Act as interpreted by the Secretary or the Department of Labor as set forth in instructions issued by the Department remains in effect and further modification is not required.

4. *Attachment A—Changes to Section I.*

a. On page 1 of Attachment A, change the heading of Section I. to read:

"I. *Section-by-Section Explanation of Title I of Public Law 102–164, as amended by Public Laws 102–182 and 102–244 and further amended by P.L. 102–318.*".

b. In Section I.B.5. of Attachment A, entitled "Election.", strike such heading and insert the following new heading, "*Election by States; Weeks of Benefits During Phase-Out.*". In addition, add the following new paragraph heading before the word "Subsection"; "a. *Election by States.*—(i)", and add the following new subparagraph (ii) and the following new paragraph b.:

"(ii) The preceding sentence shall not be applicable with respect to any EB period which begins after March 6, 1993, nor shall the special rule in Section 203(b)(1)(B) (i.e., no EB period may begin before the fourteenth week after the end of a previous EB period) of the Federal-State Extended Unemployment Compensation Act of 1970 (or similar provision of State law) operate to preclude the beginning of an EB period after March 6, 1993, because of the ending of an earlier EB period under the preceding sentence (i.e., Governor's waiver).

"b. *Weeks of Benefits During Phaseout.*—"Notwithstanding the requirement that an individual must have no rights to compensation under Section 101(b)(1)(B) of the EUC Act or any other provision of law, if for any week beginning after March 6, 1993, an EB period is triggered on with respect to a State, an individual entitled to EB, whether claiming benefits or not, in the State for such week and any following week shall be paid either EUC or EB under the State law, whichever is greater, but in no case may both be paid.".

c. In Section I.B. of Attachment A, add the following new paragraph 6. before Section I.C.

"6. *Certain Rights to Regular Compensation Disregarded.*

"If an individual exhausts his/her rights to regular compensation for any benefit year, such individual's eligibility to receive EUC with respect to such benefit year shall be determined without regard to any rights to regular compensation for a subsequent benefit year if the individual does not file a claim for regular compensation for such subsequent benefit year.

Note: The individual is given the choice after explanation of the advantages and disadvantages of filing for regular compensation for a subsequent benefit year. An individual who does file such a claim for regular compensation will not be eligible for any further EUC based on the previous benefit year. This amendment applies to all weeks of unemployment beginning after July 3, 1992.".

d. In Section I.C.3. of Attachment A, entitled "*Applicable Limit.*", replace paragraph c. and the flush paragraph (at the end) with the following new paragraph c. and add new paragraphs d., e., f. and g.

"c. *Reduction for Weeks After June 13, 1992.*—In the case of weeks beginning after June 13, 1992—

"(i) substitute 26 for 33 in paragraph a. and 20 for 26 in paragraph b. and

"(ii) substitute 100 percent for 130 percent in paragraph a. in Section I.C.2.

"d. *Reduction for Weeks in 7-Percent Period.*—In the case of weeks beginning in a 7-percent period—

"(i) paragraph c. shall not apply,

"(ii) substitute 15 for 33 in paragraph a. and 10 for 26 in paragraph b., and

"(iii) substitute 60 percent for 130 percent in paragraph a. in Section I.C.2.

"e. *Reduction for Weeks in 6.8-Percent Period.*—In the case of weeks beginning in a 6.8-percent period.—

"(i) paragraphs c. and d. shall not apply,

"(ii) substitute 13 for 33 in paragraph a. and 7 for 26 in paragraph b., and

"(iii) substitute 50 percent for 130 percent in paragraph a. in Section I.C.2.

"f. *7-Percent Period; 6.8-Percent Period.*—For purposes of this paragraph—

"(i) A 7-percent period means a period which begins with the second week after the first week for which the requirements of clause (ii) are met, and a 6.8-percent period means a period which begins with the second week after the first week for which the requirements of clause (iii) are met.

"(ii) The requirements of this clause (ii) are met for any week if the average rate of total unemployment (seasonally adjusted) for all States for the period consisting of the most recent 2-calendar month period (for which data are published before the close of such week) is at least 6.8 percent, but less than 7 percent.

"(iii) The requirements of this clause (iii) are met for any week if the average rate of total unemployment (seasonally adjusted) for all States for the period consisting of the most recent 2-calendar month period (for which data are published before the close of such week) is less than 6.8 percent.

"In no event shall a 7-percent period occur after a 6.8-percent period occurs, and a 6.8-percent period, once begun, shall continue in effect for all weeks thereafter for which benefits are provided under the EUC Act.

"g. *Limitations on Reductions.*—In the case of an individual who is receiving EUC for a week preceding the first week for which a reduction applies under paragraphs c., d. or e., such reduction shall not apply to such individual for any week thereafter for which the individual is otherwise eligible for EUC.

"Note: The above provision means that if an individual is eligible for EUC for any week prior to the week a reduction is to occur, his or her account balance is not reduced thereafter except for amounts actually paid, even though the individual is not paid for every week. If the individual claims a week for which he/she is not eligible, such individual's account is not subject to reduction unless there is an overpayment. But depending on the circumstances, the individual may be subject to an applicable disqualification and liable for any overpayment.".

e. In Section I.C.4. of Attachment A, entitled "*No Reduction of Applicable Limit.*", change the phrase "Except as provided in 3.c.," to read "Except as provided in paragraphs 3.c. d. and e. in Section I.C.3.,".

f. In Section I.C.10. of Attachment A, entitled "*Effective Dates.*", replace the language in paragraph b. with the following:

"b. No new EUC claims may be made effective for any week which begins after March 6, 1993. In the case of an individual who is receiving EUC for a week prior to or including March 6, 1993, EUC shall continue to be payable to such individual for any week thereafter for which the individual is otherwise eligible. No EUC shall be payable however, for any week beginning after June 19, 1993.

"Note: The above provision means that if an individual is eligible for EUC for any week prior to or including March 6, 1993, his or her account balance is not reduced thereafter except for amounts actually paid even though the individual is not paid for every week. If the individual claims a week for which he/she is not eligible, such individual's account is not subject to reduction unless there is an overpayment. But depending on the circumstances, the individual may be subject to an applicable disqualification and liable for any overpayment.".

g. In Section I.E.2. of Attachment A, entitled "*Authorization.*", add the following sentence at the end of the paragraph:

"New Subsection (e) directs the Secretary of Treasury to transfer general revenue funds from the Treasury to the EUCA account to make payments under the EUC Act by reason of the amendments made to Sections 101 and 102 of the EUC Act of 1991 and to the employment security administration account such sums as may be necessary for purposes of assisting States in meeting administrative costs by reason of the amendments made by Sections 101, 102, 201 and 202 of the "Unemployment Compensation Amendments of 1992" (Pub. L. 102-318).".

h. In Section I.G.2 of Attachment A, entitled *"Period of Eligibility."*, change the date in paragraph b. from "July 4, 1992" to "March 6, 1993".

i. In Section I. of Attachment A, add the following new Subsection H.:

"H. *Other Provisions of the "Unemployment Compensation Amendments of 1992" (P.L. 102-318).*

"1. *Section 102(b)—Modification of Eligibility Requirements—Transition Rules.*

"a. *Prohibition of Recovery of Certain Overpayments.*

"On and after the date of enactment of Pub. L. 102-318 (July 3, 1992), no repayment of any EUC shall be required under section 105 of the EUC Act of 1991 if the individual would have been entitled to EUC had the amendment to the requirement that a new claim for regular compensation be filed (now changed by the addition of paragraph (f) to Section 101) been in effect since the beginning of the EUC Act of 1991.

"Note: The application of Section 102(b(2)(A) creates a statutory bar prohibiting the States from taking action under section 105 to enforce recovery of outstanding overpayment balances as of July 3, 1992, for individuals who would have been entitled to EUC had the amendment made by section 102(a) of Pub. L. 102-318 been in effect since the start of the EUC program. Any overpayment determinations issued by the States to individuals under the law as in effect before the amendment in Section 102(a) are valid and shall not be changed. This means that liability for the overpayment remains unchanged, but that enforcement of the liability to repay the balance of the outstanding overpayment on and after July 3, 1992, is changed. The application of Section 102(b)(2)(A), in actuality, is not a waiver in that there are no "equity and good conscience" tests applied to each individual's situation; rather it is a blanket withdrawal of authority to enforce recovery of the overpaid amount. Overpayments for which enforcement of recovery is prohibited will be reflected as write-offs on line 205 of the ETA 227 report.

"Section 102(b)(2)(A) prohibits the recovery of EUC non-fraudulent overpayments solely if the individual would have been entitled to EUC had the amendment made by Section 102(a) of Pub. L. 102-318 been in effect since the start of the EUC program. States should apply the following guidelines and procedures in implementing this provision—

"• No EUC overpayment determination for any reason other than for the amendment made by section 102(a) of Pub. L. 102-318 is subject to the write-off because of Section 102(b)(2)(A).

"• Recovered amounts received by the State before July 3, 1992, are not subject to the write-off in Section 102(b)(2)(A) and will not be returned to the individual by the State.

"• As of July 3, 1992, States shall cease all section 105 actions to enforce recovery of outstanding balances of overpayments which are subject to the prohibition in Section 102(b)(2)(A) of Pub. L. 102-318. This means that States shall return any repayments received from an individual on and after July 3, 1992, if the individual is subject to the amendment made by Section 102(a) and the individual has not been notified that repayment is not required. If an individual subject to the amendment made by Section 102(a) voluntarily repays the State, all or part of the outstanding overpayment balance on or after July 3, 1992, after notification that repayment is nor required, the State shall accept the repayment for return to the EUCA. In no event shall an individual recieve duplicate payments under different programs for the same week.

"• States shall not issue a redetermination implementing the amendment made by Section 102(a) if a previous determination waiving the recovery of an overpayment under Section 105(b) of the EUC Act was issued to an individual who is subject to the amendment made by Section 102(a) of Pyb. L. 102-318.

"b. *Waiver of Rights to Certain Regular Benefits.* If—

"(i) before the date of enactment of Pub. L. 102-318, an individual exhausted his/her rights to regular compensation for any benefit year, and

"(ii) such individual was not eligible to receive EUC because of being entitled to regular compensation for a subsequent benefit year, such individual may elect to defer his/her rights to regular compensation with respect to weeks beginning after the date of enactment of Pub. L. 102-318 until such individual has exhausted his/her rights to EUC. Such individual shall be entitled to receive EUC for such weeks in the same manner as if he/she had not been entitled to regular compensation on the subsequent benefit year claim.

"2. *Section 104—Persian Gulf Reservists.*

"a. *Application.*

"This section is a free-standing addition not affecting any other provision of law. This section is only applicable to reservists called-up to active duty in a reserve status in the Armed Forces after August 2, 1990 and before March 1, 1991, and, subject to the provisions in this section, affects the reservist's EUC weekly benefit amount payable after exhaustion of regular UCX benefits, and for weeks beginning after enactment of Pub. L. 102-318. The application of this section has no effect on the reservist's maximum amount of EUC payable as determined under the provisions of Section 102(b)(1) of the EUC Act.

"b. *Provisions.*

"If a reservist, as described in paragraph a. above, was receiving regular compensation, extended compensation, or trade readjustment allowances for the week he/she was called-up to active duty (for at least 90 continuous days), and, if the reservist was entitled to regular compensation on the basis of such active duty in the Armed Forces at a weekly amount that was less than the amount to which he/she was entitled for the week of call-up, the reservist will receive an EUC weekly benefit amount (after exhaustion of the regular compensation based on the active duty) equal to the weekly amount of the claim in effect during the week of call-up to active duty.

"Note: The provisions discussed above in new paragraph b. of section I.B. of Attachment A and new Section I.H.1.b. of Attachment A shall also be applicable to such Persian Gulf Reservists.

"3. *Section 202—Modification of Extended Benefits Eligibility Requirements.*

"a. *Earnings Test.*

Section 202(a)(5) of the Federal-State Extended Unemployment Compensation Act of 1970 is amended to provide that a State may use one or more of the three specified methods of determining extended benefits eligibility, i.e., 20 weeks of work, 1½ times high quarter wages or 40 times the individual's weekly benefit amount. Prior to July 3, 1992, only one specified method was permitted.

"b. *Application to EUC.*

"Notwithstanding any other provision of law (which includes section 101(d)(12) of the EUC Act of 1991 and corresponding provisions of State law), the provisions of paragraph a. are

applicable to EUC for weeks of unemployment beginning after the date of enactment of Pub. L. 102–318 (July 3, 1992).

"Note: This means that conforming amendments to State laws are not necessary to put this provision into effect for EUC.

"c. *Prohibition of Recovery of Certain Overpayments.*

"On and after July 3, 1992, no repayment of any EUC shall be required under Section 105 of the EUC Act if the individual would have been entitled to benefits had the "earnings test" amendment mentioned in paragraph a. of this section applied to all weeks beginning on or before July 3, 1992.

"Note: The application of Section 202(a)(2)(B) creates a statutory bar prohibiting the States from taking action under section 105 to enforce recovery of outstanding overpayment balances as of July 3, 1992, for individuals who would have been entitled to EUC had the amendment made by section 202(a)(1) of Pub. L. 102–318 been in effect since the start of the EUC program. Any overpayment determinations issued by the States to individuals under the law as in effect before the amendment in Section 202(a)(1) are valid and shall not be changed. This means that liability for the overpayment remains unchanged, but that enforcement of the liability to repay the balance of the outstanding overpayment on and after July 3, 1992, is changed. The application of section 202(a)(2)(B), in actuality, is not a waiver in that there are no "equity and good conscience" tests applied to each individual's situation; rather it is a blanket withdrawal of authority to enforce recovery of the overpaid amount. Overpayments for which enforcement of recovery is prohibited will be reflected as write-offs on line 205 of the ETA 227 report.

"Section 202(a)(2)(B) prohibits the recovery of EUC non-fraudulent overpayments solely if the individual would have been entitled to EUC had the amendment made by Section 202(a)(1) of Pub. L. 102–318 been in effect since the start of the EUC program. States should apply the following guidelines and procedures in implementing this provision—

"• No EUC overpayment determination for any reason other than for the amendment made by Section 202(a)(1) of Pub. L. 102–318 is subject to the write-off because of Section 202(a)(2)(B).

"• Recovered amounts received by the State before July 3, 1992, are not subject to the write-off in section 202(a)(2)(B) and will not be returned to the individual by the State.

"• As of July 3, 1992, States shall cease all Section 105 actions to enforce recovery of outstanding balances of overpayments which are subject to the prohibition in Section 202(a)(2)(B) of Pub. L. 102–318. This means that States shall return any repayments received from an individual on and after July 3, 1992, if the individual is subject to the amendment made by section 202(a)(1) and the individual has not been notified that repayment is not required. If an individual subject to the amendment made by Section 202(a)(1) voluntarily repays the State, all or part of the outstanding overpayment balance on or after July 3, 1992, after notification that repayment is not required, the State shall accept the repayment for return to the EUCA. In no event shall an individual receive duplicate payments under different programs for the same week.

"• States shall not issue a redetermination implementing the amendment made by Section 202(a)(1) if a previous determination waiving the recovery of an overpayment under Section 105(b) of the EUC Act was issued to an individual who is subject to the amendment made by Section 202(a)(1) of Pub. L. 102–318."

5. *Attachment A—Changes to Section II.*

At the end of Section II.F.2., entitled "*Trigger Notice Format.*", add the following:

"In addition, the national seasonally adjusted total unemployment rates (TUR) for the applicable two months will be shown. The change to a 7-percent period or to a 6.8-percent period begins with the second week after the first for which rates are published. Therefore, the TURs shown will have the appropriate lag.".

6. *Attachment A—Changes to Section III.*

a. In Section III.A., definition 1, "*Act*", delete "approved November 15, 1991, as amended by H.R. 1724" and insert "as amended by Public Laws 102–182 and 102–244, and further amended by Pub. L. 102–318".

b. In Section III.A., definition 3, "*Period of Eligibility*", change the date of "July 4, 1992" to "March 6, 1993".

c. In Section III.B., "*Beginning and Ending of the EUC Program*", change the dates in the first sentence of the third paragraph from "July 4, 1992" to "March 6, 1993." and substitute the following for the second sentence in paragraph three: "Individuals who become eligible for EUC before March 6, 1993 will continue to be eligible for any week thereafter for which the individual is otherwise eligible for EUC. However, no EUC shall be payable for any week beginning after June 19, 1993.".

d. In Section III.C.1, "*Basic eligibility Requirements.*", replace existing paragraph b. with the following:

"b. have no rights to any compensation with respect to that week under such law or any other State unemployment compensation law, the Railroad Unemployment Insurance Act, or, under any other Federal law administered by the State agency.

"An individual will be considered to meet the requirements of the above paragraph if the week began subsequent to July 3, 1992 and such individual has not filed a claim for regular unemployment benefits to establish a subsequent benefit year which included such week, or

"An individual who exhausted his rights to regular compensation for any benefit year before July 3, 1992 and after such exhaustion, such individual was not eligible to receive EUC by reason of being entitled to regular compensation for a subsequent benefit year, and elects to defer his rights to regular compensation for such subsequent benefit year with respect to weeks beginning after July 3, 1992, such an individual is entitled to receive EUC until his rights to EUC are exhausted in respect to the previous benefit year. No EUC is payable for any week the individual is paid any amount as regular compensation.".

In addition, replace existing paragraph e. with the following:

"e. have at least 20 weeks of employment (as defined in State law) during the base period, or during such base period earned its equivalent under State law or at least one and one-half times the high quarter wages, or of forty times the most recent weekly benefit amount. For purposes of this requirement, "weekly benefit amount" means the weekly benefit amount, including dependents' allowances, payable for a week of total unemployment (before any reductions because of earnings, pensions or other requirements) which applied to the most recent week,".

Also, delete the period at the end of paragraph i. and add the following: "except as provided in these operating instructions with regard to the amendments in Public Law 102–318.

"Note: the requirements of section 202(a)(3) (and corresponding provisions of State law) referenced in paragraphs g. and h. above are not applicable for weeks of unemployment beginning after March 6, 1993.".

e. In Section III.C.2., entitled "*Determining Exhaustees.*", at the end of paragraph b. insert the following language:

"*Provided* that, an individual shall be considered to be an exhaustee for the purposes of EUC if the individual had

sufficient employment and wages on the basis of which a subsequent benefit year could be established under any State or Federal law after July 3, 1992, and the individual elects not to file a new claim for regular benefits to establish such a subsequent benefit year, after being fully informed of his/her rights, or

"An individual who exhausted all rights to regular compensation for any benefit year before July 3, 1992 and after such exhaustion, such individual was not eligible to receive EUC by reason of being entitled to regular compensation for a subsequent benefit year, and elects to defer his rights to regular compensation for such subsequent benefit year with respect to weeks beginning after July 3, 1992 until such individual has exhausted his rights to EUC in respect to the previous benefit year. No payment of EUC may be made for any week for which an individual is paid any amount as regular compensation.".

f. In Section III.C.3., entitled "*Determination of "Period of Eligibility".*", change the date of "July 4, 1992" to "March 6, 1993".

g. In Section III.C.4, entitled *"20-Weeks of Work Requirement.*, change the heading to read "*Work Qualifying Requirements.*" and insert at the beginning of the first paragraph the following language: "For weeks of unemployment beginning before July 3, 1992," and insert the following at the end of the Section:

"*Provided* that effective for weeks of unemployment beginning after July 3, 1992, Section 202[a][5] of the Federal-State Extended Unemployment Compensation Act of 1970 has been amended to provide for States to utilize one or more specified methods of determining an individual's monetary eligibility for extended benefits [and now EUC]:

"a. One and one-half times the high quarter wages; or

"b. Forty times the most recent weekly benefit amount, and if this alternative is adopted, it shall use the weekly benefit amount (including dependents' allowances) payable for a week of total unemployment (before any reductions because of earnings, pensions or other requirements) which applied to the most recent week; or

c. Twenty weeks of full-time insured employment as defined in the State law.

"Note: This change shall be applied to all EUC claims "[n]otwithstanding any other provisions of [State or Federal] law.".

h. In Section III.D., entitled "*Weekly Benefit Amount.*", add a new Subsection as follows:

"3. *Persian Gulf Reservists.*

Subject to the provisions of Section 104 of Public Law 102–318 the EUC weekly benefit amount of a Persian Gulf Reservist will be not less than the weekly benefit amount to which the individual was entitled for regular compensation, extended compensation, or trade readjustment allowances for the week in which the reservist was called-up to active duty in the Armed Forces. Section 104 of Public Law 102–318 is effective for EUC payments for weeks beginning after July 3, 1992.

Therefore, States and cooperating State agencies will make monetary redeterminations on the claims of reservists who have established EUC entitlement before the effective date of Section 104 of Public Law 102–318 and who have an EUC monetary balance remaining for a week beginning after the effective date of this Section. The application of this Section to the reservists' EUC claim affects only the computation of the weekly benefit amount and has not affect on computation of the maximum benefit amount.

Note: The application of this section requires SESAs to increase the eligible reservist's EUC weekly benefit amount for all weeks of unemployment beginning after July 3, 1992, but SESAs shall not increase the eligible reservist's EUC maximum amount. The result is that the eligible reservist will exhaust EUC entitlement sooner.

The contents of section 102(b)(1) of the EUC Act and Section 104 of Public Law 102–318 do not permit an increase to the reservist's EUC maximum amount. Section 102(b)(1) prescribes that the EUC weekly and maximum amounts are to be based on the claim for regular compensation in respect to the benefit year to which the EUC claim is based. In the application of section 104 of Public Law 102–318, the reservist's EUC claim is based on regular compensation (including UCX) based all or in part on the reservist's Persian Gulf "Federal service" and is not based on the claim in effect at the time of the reservist's call-up to active duty. Section 104 of Public Law 102–318 only provides that the reservist's EUC weekly benefit amount be increased, not the reservist's EUC maximum amount. Consequently, there is no statutory authority for an increase in the reservist's EUC maximum amount to effect the application of Section 104 to Persian Gulf Reservists.".

i. In Section III.E.1, entitled "*Accounts.*", add new paragraphs c. and d. as follows:

"c. "*For EUC claims filed for a week after a National 7-percent period is in effect.*"

"(i) 60 percent of the total entitlement to regular benefits (including dependents" allowances) payable to the individual with respect to the most recent benefit year, from which the individual received benefits, or

"(ii) The maximum EUC payable in the State as prescribed by the applicable limit.

"[d. *For EUC claims filed for a week after a National 6.8-percent period is in effect.*

"(i) 50 percent of the total entitlement to regular benefits [including dependents" allowances) payable to the individual with respect to the most recent benefit year, from which the individual received benefits, or

"(ii) the maximum EUC payable in the State as prescribed by the applicable limit amount.".

j. In Section III.E.2., entitled "*Maximum EUC Payable in a State—Applicable Limit.*", amend subparagraph (a)(iii), and paragraph b. and add new paragraphs c., d., e., f. and g. as follows:

"(iii) *No Reduction after June 13, 1992.* An individual who has established an EUC account effective with respect to a week which ends on or before June 13, 1992, shall not be subject to any reduction in the maximum amount in such account by reason of the amendments to Section 102(b)(2)(A). Any individual whose account was reduced by reasons of the prior provisions of clause (ii) of Section 102(b)(2)(A). Any individual whose account was reduced by reason of the prior provisions of clause (ii) of Section 102(b)(2)(A) shall be redetermined and the account restored to the appropriate level as of June 14, 1992.

"b. *For EUC Claims Filed for a Week Beginning after June, 13, 1992.*

"(i) *Thirteen Weeks.* The maximum amount of EUC payable is up to 20 times the individual's weekly benefit amount, as computed under 20 CFR 615.6, in all States that are not in high unemployment period.

(ii) *Twenty-six Weeks.* The maximum amount of EUC payable is up to 26 times the individual's weekly benefit amount, as computed under 20 CFR 615.6, in all States that are in a high unemployment period.

"c. *For EUC claims filed for weeks after a National 7-percent period is in effect.*

"(i) *Ten weeks.* The maximum amount of EUC payable is up to 10 times the individual's weekly benefit amount, as computed under 20 CFR 615.6, in all States that are not in a State "high unemployment" period.

"(ii) *Fifteen weeks.* The maximum amount of EUC payable is up to 15 times

the individual's weekly benefit amount as computed under 20 CFR 615.6, in all States that *are* in a State "high unemployment" period.

"d. *For EUC claims filed for weeks after a National 6.8-percent period is in effect.*

"(i) *Seven weeks.* The maximum amount of EUC payable is up to 7 times the individual's weekly benefit amount, as computed under 20 CFR 615.6, in all States that *are not* in a State "high unemployment" period.

"(ii) *Thirteen weeks.* The maximum amount of EUC payable is up to 13 times the individual's weekly benefit amount as computed under 20 CFR 615.6, in all States that *are* in a State "high unemployment" period.

"e. *7-percent Period; 6.8-percent Period.* In no event shall a 7-percent period occur after a 6.8-percent period occurs, and a 6.8-percent period, once begun, shall continue in effect for all weeks thereafter for which benefits are provided under the EUC.

"f. *Limitations on Reductions.* In the case of an individual who is receiving EUC for a week preceding the first week for which a reduction applies under paragraphs b., c. or d., such reduction shall not apply to such individual for any week thereafter for which the individual is otherwise eligible for EUC.

"g. *Modification to Final Phase-out.* If an individual is receiving EUC for a week prior to or including March 6, 1993, and meets the eligibility requirements of the EUC Act, as amended, the individual shall continue to be paid EUC for any week thereafter for which the individual meets the eligibility requirements of the Act until the individual's account is exhausted or until June 19, 1993. No EUC is payable for any week beginning after June 19, 1993, even if the individual still has a balance.".

k. In Section III.E.4., entitled "*Beginning of an Extended Benefit Period After the Effective Date of the Act.*", designate the existing first two paragraphs beginning with the word "States" as "a. States", and delete the phrase "in a 13-week period or 20-week period", and add the following new paragraph b.:

"b. If for any week beginning after March 6, 1993, an extended benefit period is triggered on with respect to a State, individuals claiming benefits in such State for such week and any following week shall be eligible to receive compensation under this Act or extended compensation benefits under State law, whichever is greater.

"The election by the Governor, as described in paragraph a., is neither authorized nor in effect for any EB period beginning after March 6, 1993.".

l. In Section III.E.7, entitled "*Combined Wage Claims.*", between the second and third paragraphs, insert the following heading:

"a. *Procedures before July 1, 1992.*".

Before the last sentence in the fourth and last paragraph insert the following heading and text:

"b. *Procedures on and after July 1, 1992.* The paying State will bill all benefits paid on or after July 1, 1992, directly to the Federal government. The transferring State will not charge the EUCA account for benefits paid on or after July 1, 1992, by the paying State.".

m. After Section III.E.8, "*Changes in Account.*", *insert a new section III.E.9. which reads as follows:*

"9. *Changes Due to Provisions in Public Law 102–318.* The EUC maximum amount payable to a claimant may change as the result of the following sections of PL 102–318, which amend provisions of Public Law 102–164 (as amended by Public Law 102–182 and Public Law 102–244):

"—Section 101(b), which amends Section 102(b)(2)(A) of Pub. L. 102–164, as amended;

"—Section 202(a)(2)(A), which is applicable to EUC claimants via Section 101(d)(2) of Pub. L. 102–164, as amended.

"The application of these sections of Pub. L. 102–318 may result in the issuance of monetary redeterminations changing the maximum amount of EUC payable to a claimant.".

n. In Section III.F.1., entitled *Trade Readjustment Allowances (TRA).*", add the following new paragraph after the second paragraph:

"The controlling guidance and operating instructions for implementing the amendment to section 231(a)(2) of the Trade Act of 1974 contained in section 106 of Pub. L. 102–318 are included in GAL 10–92, dated July 6, 1992.".

o. In Section III.H.2., entitled "*Interstate Initial Claims.*", delete the first paragraph which reads "Interstate EUC claimants are filed on the same forms . . ." and insert the following:

"Interstate EUC claims are filed on the same forms and in the same manner as interstate claims for EB. Before accepting an initial EUC claim, the agent State must review the claimant's work history, examine potential entitlement and advise the claimant of all filing options. If the claimant has sufficient employment and wages to establish a new benefit year under any State or Federal program or under the combined wage arrangement, the right to file under the EUC program must be explained. At the time of the initial EUC claim, the agent State will:"

In addition, replace the existing paragraph b. with the following:

"Review the claimant's work history and advise the claimant of all filing options;".

p. In Section III.K., entitled "*Applicability of State Law Provisions.*", change the period at the end of the first sentence (after the word "State") to a comma, and add, "except that any State law provision limiting computation of monetary eligibility to one method under section 202(a)(5) (20 weeks of work or equivalent), is not applicable for weeks of unemployment beginning after July 3, 1992. More than one of the methods specified in such Section may be utilized for EUC purposes.".

q. In Section III.L., entitled "*Claimstaking Procedures.*", change the heading of section III.L.1. to read "*Notification.*". Then insert the following heading before the words "The "SESA" that begin the existing paragraph:

"a. *Notification of Potential EUC Claimants.*".

In addition, add the following new paragraph b.:

"b. *Notification of Media.*

In order to assure public knowledge of the status of the EUC program, the SESA shall notify all appropriate news media having coverage throughout the State of the beginning of, or changes to, the EUC program. This includes, but is not limited to, changes in benefit levels because of "triggering" up or down; the effects of law changes, such as an extension of the EUC program; and the effects of termination of the program.".

r. In Section III.L.2., entitled *Initial Claim.*, add the following phrase at the end of paragraph b. after the comma:

"including rights to EUC while not filing a claim to establish regular benefit entitlement, and/or rights to elect to defer rights to regular compensation until exhaustion of EUC,".

s. In Section III.L.3., "*Notification of Responsibility.*", insert the following heading before the existing first paragraph:

"a. *General EUC Notification to Claimants.*".

In addition, add the following new paragraph b. after the existing second paragraph:

"b. *Claimant Notification—Election to Defer Rights to Regular Compensation in a Subsequent Benefit Year.* In order to effect the implementation of Section 102(b)(2)(B) of P.L. 102–318 for weeks of unemployment beginning after July 3, 1992, the SESAs will provide individuals with a full explanation of their rights to EUC and regular compensation before

the individuals elect whether or not to defer their rights to regular compensation until they have exhausted their rights to EUC in respect to the previous benefit year. This explanation shall include the proviso that once the individual makes the election whether or not to defer the rights to regular compensation, that election shall not be retracted by the individual until he/she has exhausted all rights to benefits under the choice made (EUC or regular compensation). This proviso means that, if the individual elects to claim regular compensation in the subsequent benefit year, the individual shall not be eligible to later receive EUC in respect to the previous benefit year. However, this election scenario would not preclude the individual from receiving EUC after exhaustion of all rights to unemployment compensation in respect to the current benefit year. Alternatively, if the individuals elects to claim EUC, the individual may be entitled to receive regular compensation in the subsequent (current) benefit year after exhaustion of EUC. However, under no circumstances will an individual receive both EUC and regular compensation for the same week.

"SESAs may wish to consider implementing this required notification procedure as part of the SESA's on-going EUC eligibility review program.".

t. In Section III.L.4., entitled "*EUC Eligibility Requirements.*", add the following "**Note**" at the end of the Section:

"**Note:** The amendments made by Section 202(b)(1) of Pub. L. 102–318, which suspend, for the period beginning after March 6, 1993 and before January 1, 1995, the EB active search for work requirements and the requirement for subsequent employment to satisfy a regular compensation denial before an individual may be determined eligible for EB, also apply to any weeks of unemployment for EUC eligibility that overlaps such dates. During such period of time, State law provisions for regular compensation apply to both the EB and EUC programs.".

u. In Section III.L.5., entitled "*Work Registration.*", add the following sentence at the end of the first paragraph:

"Also, registration requirements apply to individuals for which the State is acting as an agent State under the IBPP.".

v. In Section III.M.2., entitled "*Recovery of Overpayments.*", delete the first paragraph and insert the following in its place:

"Under Section 105(b) of the Act each State shall require repayment from individuals who have received any payment of EUC to which they are not entitled (whether fraudulent or non-fraudulent), unless such repayment is prohibited by section 102(b)(2) or section 202(a)(2)(B) or unless the State, under the optional language of Section 105(b), elects to have a program under which it will waive recovery of overpayments. A State may elect to have an EUC waiver program even if it has no waiver provisions under State law for regular compensation. If the State elects to have an EUC waiver program and has a waiver program under State law, no State law waiver provisions for regular compensation apply to EUC, and the State shall follow the guidelines outlined in this section III.M.2.

"The recovery of certain overpayments is now prohibited. On and after July 3, 1992, no recovery of any EUC shall be required under Section 105 if the individual would have been entitled to receive such compensation had the amendment made to the EB earnings test applied to all weeks beginning on or before July 3, 1992. Under section 102(b)(2) overpayments are required to be established; and those overpayments should be written off.".

In addition, insert "or recovery prohibited" after "or is waived under paragraph (2) of this Section" in paragraph M.w.b.(4) and "or prohibited" after "is waived" in paragraph M.2.b.(9).

w. After Section III.M.2., entitled "*Recovery of Overpayments.*", insert a new Section III.M.3., which reads as follows:

"3. *P L 102–318—Prohibition on Recovery of Certain Overpayments.*

"Sections 102(b)(2)(A) and 202(a)(2)(B) of Pub. L. 102–318 prohibit the enforcement of recovery of certain non-fraudulent overpayments. State are reminded that these sections only apply to outstanding balances of non-fraudulent overpayments as of July 3, 1992. See Sections I.H.1.a. and I.H.3.c..".

x. In Section III.N., entitled "*Payment to States.*", add a new heading after the second paragraph:

"1. *Determination and Billing Requirements for CWC Claims Before July 1, 1992.*".

After the fourth paragraph, add a new heading:

"2. *Determination and Billing Requirements for CWC Claims On or After July 1, 1992.*"

and add the following paragraph:

"Effective after June 30, 1992, the paying State will not bill the transferring State for its full pro rata share for all EUC paid on CWC claims, including UCFE and UCX. Instead, the paying State will bill the Federal Government for sufficient monies to cover its pro rata share and that of the transferring State. See the revised fiscal reporting instructions provided in Attachment B to this GAL."

7. *Attachment B—Changes to Fiscal Instructions*

a. In Section 1.a., entitled "*EUC (Benefits).*", delete the last paragraph which begins "Under the interstate arrangement for combining employment and wages (CWC). . . ." and add the following new paragraphs:

"Funds to pay EUC benefits authorized by Public Law 102–164, as amended by Public Law 102–182 and Public Law 102–244, except for benefits for employees of non-profit and governmental entities, are paid from Federal unemployment trust funds in EUCA. Funds for benefits for employees of non-profit and governmental entities, and the new EUC benefits authorized by Public Law 102–318 will be appropriated from general revenue funds in the U.S. Treasury and transferred to EUCA.

"From a State perspective, although the source of funds differs, all EUC benefit funds are withdrawn from EUCA and State drawdown procedures from EUCA are not impacted (except for funds for benefits paid under the interstate arrangement for combining employment and wages (CWC) as addressed below). However, beginning with the July reporting period, States will be required to identify separately on the ETA 2112 EUC payments for weeks of unemployment attributable to initial claims filed on or before July 4, 1992, and for weeks of unemployment attributable to initial claims filed after July 4, 1992 so that the appropriate general revenue reimbursement to EUCA can be estimated and requested. (See Attachment C, Reporting Instructions.)

"Under the CWC, a State should include in EUC drawdowns 100 percent of the amount it expects to disburse to claimants (as a paying State) and the amount necessary to reimburse other States (as a transferring State) for benefits paid through June 30, 1992. (Only the paying State will drawdown for CWC EUC benefits paid after June 30, 1992.) All future requisitions must be adjusted for reimbursement received from other states under the CWC program".

b. In Section 1.b., entitled "*EUC Administrative Funds.*", delete the second and third paragraphs and insert the following paragraphs in their place:

"Funds to pay UI administrative costs related to the processing of EUC workloads resulting from Public Law 102–164 as amended by Public Law 102–182 and Public Law 102–241 are

provided through the FY 1992 Labor/HHS Appropriations Act using the new contingency reserve language which made available additional funds automatically based on a formula tied to the Average Weeks of Insured Unemployment (AWIU) level. Funds to pay UI EUC administrative costs resulting from Public Law 102–318 are provided through general revenue funds in the U.S. Treasury and appropriated to the Employment Security Administration Account (ESAA) in the Unemployment Trust Fund.

"The amount of funds to be transferred from general revenues to the ESAA account will be estimated by the Employment and Training Administration. Thus, even though the funding sources are different, the process is designed to make it transparent to the States. No separate or different reporting or accounting for administrative workload costs associated with this legislation will be required.

"The procedures for handling all above-base workload, including that generated by this new legislation, are the same from the States' perspective; administrative costs associated with EUC claims will be paid out of contingency associated with EUC claims will be paid out of contingency through the regular process. States may request increases in their contingency advances for the 4th quarter, based on the impact of this legislation.

"Since both the contingency reserve fund and the "such sums" language in Public Law 102–318 provide for the availability of the necessary funds without going through the Congressional appropriations process, adequate and timely administrative funding is assured, regardless of the workload level."

In addition, in paragraph 4, add "and Pub. L. 102–318" after "Pub. L. 102–244".

c. In Section 2.c., entitled "*Accounting for EUC Payments (Benefits).*", replace existing subparagraph (1) with the following:

"(1) EUC advances to the States' UTF accounts, amounts received as reimbursement from other States for EUC–CWC payments made prior to July 1, 1992, and disbursements for EUC benefit payments will be reported on the monthly ETA 2112. Do not use a separate form for this report. (See Attachment C, Reporting Instructions.) Accurate reporting of advances, reimbursements and payments is important due to the monthly reconciliation of balances with UIS records; balances are subject to constant congressional and public inquiries.".

8. *Attachment C—Changes to Reporting Instructions*

a. In Section 1., entitled "*General.*", insert "Except for the ETA 2112," at the beginning of the third sentence of paragraph 1.

b. In Section 2.c., entitled "*ETA 227.*", insert at the end thereof, the following sentence: "Overpayments for which recovery is prohibited by Section 102(b)(2) or Section 202(a)(2)(B) of P.L. 102–318 should be reflected as write-offs on line 205.".

c. Section 2.f., entitled "*ETA 2112.*", is amended to read as follows:

"Do not use a separate form for this report. Amounts received as advances for EUC should be reported on line 22 in columns C and E. Amounts received as reimbursement from other States for EUC–CWC payments made prior to July 1, 1992 should be included on either line 24 or 25 in columns C and F with an explanation under "Comments".

"Total disbursements for EUC payments are to be included on line 39 in columns C and F with explanations under "Comments" as follows:

"1. *Disbursements* For weeks of unemployment attributable to initial claims filed on or before July 4, 1992.

"Amounts included on line 39 are to be broken out by four categories and shown in the "Comments" section. For example: "EUC weeks attributable to initial claims filed on or before 7/4/92, line 39: Regular=$1,473, UCFE=$452, UCX=$389, Other=$122.

"2. *Disbursements* for weeks of unemployment attributable to initial claims filed after July 4, 1992.

"Because of the common funding source for all weeks of unemployment attributable to initial claims filed after July 4, 1992, regardless of program category, a breakout by program for such weeks is not required. Amounts included on line 39 should be noted in the "Comments" section. For example: "EUC weeks attributable to initial claims filed after 7/4/92, line 39=$1,000,000."

"Note: Residual activity from previous Federal emergency programs must continue to be reported on line 39 and, therefore, must also be noted in the "Comments" section. Because of limited space in the comments section of the ETA 2112, clear abbreviations may be used. For example: Ln.39–EUC on/before 7/4/92: Reg=$1,473, FE=$452, X=$389, Other=$122; Ln.39–EUC after 7/4/92: $1,000,000; Ln.39–FSC: $107.".

9. *Redeterminations.* The authority to issue redeterminations to EUC claimants covered under sections 101(b), 104, and 202(a)(2)(A) of P. L. 102–318 is contained in Federal law and the operating instructions contained in this GAL, and any supplemental operating instructions issued by this Department, rather than applicable provisions of State law. this means that State law redetermination time limitation provisions are not applicable to the redetermination of EUC claims to implement the above sections of Pub. L. 102–318 contained in this section of this directive.

Redeterminations of EUC claims will continue to be made in the established manner, applying State law on procedural matters (except where inconsistent with the provisions of Federal law, applicable regulations at 20 CFR part 615, and the operating instructions issued by this Department), and applying the provisions of Federal law on substantive matters, including the regulations at 20 CFR part 615 and operating instructions issued by this Department.

For these purposes, the State UI law includes judicial decisions of the courts of the State in comparable UI cases as well as State statutory provisions, and thus is the same as the "State law" which is relevant for conformity and compliance purposes under Title III of the Social Security Act and the Federal Unemployment Tax Act. However, the authority to issue redeterminations applying the provisions of the above sections of Pub. L. 102–318 contained in this directive derives from the Federal law rather than State law. No departure from these rules shall be undertaken in any circumstances without prior approval of the Department of Labor.

10. *Action Required.* States are required to implement the Unemployment Compensation Amendments of 1992 (Pub. L. 102–318) in accordance with the operating instructions contained in this GAL. States are required to:

a. Inform all appropriate staff of the requirements of this GAL.

b. Take appropriate actions to implement the operating instructions contained in this directive for all EUC claims, including claims for week beginning on June 14, 1992, and thereafter.

c. As of July 3, 1992, cease all Section 105 actions to enforce recovery of outstanding balances of overpayments which are subject to prohibitions in Sections 102(b)(2)(A) and 202(a)(2)(B) of Pub. L. 102–318.

d. Take appropriate actions to identify and inform EUC claimants of the provisions of Pub. L. 102–318 that will result in the redeterminations of certain categories of EUC claims. It is important that all claimants subject to the statutory prohibition against the use of

Section 105 actions to enforce recovery of certain overpayment balances (Sections 102(b)(2)(A) and 202(a)(2)(B) of Pub. L. 102–318), be promptly and fully informed of the appropriate statutory prohibition in order to avoid repayment of outstanding overpayments that the State cannot legally enforce after July 3, 1992.

e. Announce in a newspaper of general circulation and appropriate media and the effective dates of Sections 101(b), 104, and 202(a)(2)(A), of Pub. L. 102–318 which will result in the redeterminations of EUC claims to applicable claimants. The announcements shall include the effect that these provisions have on previously determined EUC claims, including changes made to benefit levels because of the amendments made to Section 102 of the EUC Act. It is important that the newspaper and media announcements include information that State law redetermination time limitation provisions are not applicable to EUC claims redeterminations involving claimants affected by the Sections of Pub. L. 102–318 mentioned in this paragraph.

f. Take appropriate actions to redetermine the EUC claims of claimants covered under the sections of Pub. L. 102–318 mentioned in paragraph e. above.

g. Take appropriate action to review the three specified earnings test methods and select one or more for EUC eligibility purposes. Inform the Regional Office, within 30 days after receipt of this directive, of the State's election.

11. *Inquiries.* Direct questions to the appropriate Regional Office.

[FR Doc. 92–19048 Filed 8–10–92; 8:45 am]
BILLING CODE 4510–30–M

NUCLEAR REGULATORY COMMISSION

Abnormal Occurrence Report; Section 208 Report Submitted to the Congress

Notice is hereby given that pursuant to the requirements of Section 208 of the Energy Reorganization Act of 1974, as amended, the Nuclear Regulatory Commission (NRC) has published and issued another periodic report to Congress on abnormal occurrences (NUREG–0090, Vol. 15, No. 1).

Under the Energy Reorganization Act of 1974, which created the NRC, an abnormal occurrence is defined as "an unscheduled incident or event that the Commission (NRC) determines is significant from the standpoint of public health or safety." The NRC has made a determination that events involving an actual loss or significant reduction in the degree of protection against radioactive properties of source, special nuclear, and by-product material are abnormal occurrences.

The report to Congress is for the first calendar quarter of 1992. The report identifies the occurrences or events that the Commission determined to be significant and reportable; the remedial actions that were undertaken are also described.

Three abnormal occurrences involving medical therapy misadministrations at NRC-licensed facilities are discussed in this report. There were no abnormal occurrences at a nuclear power plant, and none were reported by NRC's Agreement States. The report also contains information updating some previously reported abnormal occurrences.

A copy of the report is available for inspection or copying for a fee at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC 20555, or at any of the nuclear power plant Local Public Document Rooms throughout the country.

Copies of NUREG–0090, Vol. 15, No. 1 (or any of the previous reports in this series), may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082. A year's subscription to the NUREG–0090 series publication, which consists of four issues, is also available.

Copies of the report may be purchased from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

Dated at Rockville, MD, this 5th day of August 1992.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 92–19050 Filed 8–10–92; 8:45 am]
BILLING CODE 7590–01–M

NATIONAL SPACE COUNCIL

Meeting of the Space Industrial Base Capability Review Task Group

AGENCY: National Space Council.

ACTION: Notice of meeting.

SUMMARY: The Space Industrial Base Capability Review Task Group of the Vice President's Space Policy Advisory Board will meet August 26 and 27, 1992.

DATES: August 26 and 27, 1992.

ADDRESSES: 2350 East El Segundo Boulevard, El Segundo, California.

FOR FURTHER INFORMATION CONTACT: Eva Czajkowski, (703) 685–3568, Joe Scifers, or Courtney Stadd, National Space Council, Executive Office of the President, Washington, DC (202) 395–6175.

SUPPLEMENTARY INFORMATION: The Space Industrial Base Capability Review Task Group of the Vice President's Space Policy Advisory Board will meet between 8:00 AM and 5:00 PM on August 26 and 27, 1992, at the Aerospace Corporation, Building A1, 2350 East El Segundo Boulevard, EL Segundo, California. Persons interested in attending should contact Eva Czajkowski, ANSER, (703) 685–3568.

Joe Scifers,

Committee Action Officer.

[FR Doc. 92–19089 Filed 8–10–92; 8:45 am]
BILLING CODE 3128–01–M

NATIONAL COMMISSION ON AMERICA'S URBAN FAMILIES

Notice of Meeting

Notice is hereby given, pursuant to Public Law 92–463, that the National Commission on America's Urban Families will hold site visits in Atlanta, Georgia, on Monday August 24, 1992. For exact time and locations, please contact the Commission two days prior to the event at 202–690–6462.

The purpose of the visits is to gather information about programs and approaches that work to strengthen families.

Records shall be kept of all Commission proceedings and shall be available for public inspection at 200 Independence Avenue, SW. room 305–F, Washington, DC 20201.

Anna Kondratas,

Exective Director.

[FR Doc. 92–19151 Filed 8–10–92; 8:45 am]
BILLING CODE 4150–04–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

SUMMARY OF PROPOSAL(S):

(1) *Collection title:* Employee's Certification.

(2) *Form(s) submitted:* G–346.

(3) *OMB Number:* 3220–0140.

(4) *Expiration date of current OMB clearance:* Three years from date of OMB approval.

(5) *Type of request:* Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

(6) *Frequency of response:* On occasion.

(7) *Respondents:* Individuals or households.

(8) *Estimated annual number of respondents:* 18,000.

(9) *Total annual responses:* 18,000.

(10) *Average time per response:* .08333 hours.

(11) *Total annual reporting hours:* 1,500.

(12) *Collection description:* Under section 2 of the Railroad Retirement Act, spouses of retired railroad employees may be entitled to an annuity. The collection obtains from the employee information about the employee's previous marriages, if any, to determine if any impediment exists to the marriage between the employee and his or her spouse.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the form and supporting documents can be obtained from Dennis Eagan, the agency clearance officer (312–751–4693). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, room 3002, New Executive Office Building, Washington, DC 20503.

Dennis Eagan,

Clearance Officer.

[FR Doc. 92–19041 Filed 8–10–92; 8:45 am]

BILLING CODE 7905–01–M

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

SUMMARY OF PROPOSAL(S):

(1) *Collection title*: Self-Employment Questionnaire.

(2) *Form(s) submitted*: AA–4.

(3) *OMB Number*: 3220–0138.

(4) *Expiration date of current OMB clearance:* Three years from date of OMB approval.

(5) *Type of request*: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

(6) *Frequency of response*: On occasion.

(7) *Respondents*: Individuals or households.

(8) *Estimated annual number of respondents*: 450.

(9) *Total annual responses*: 450.

(10) *Average time per response*: .3467 hours.

(11) *Total annual reporting hours*: 156.

(12) *Collection description*: Section 2 of the Railroad Retirement Act provides for payment of annuities to qualified employees and their spouses. Work for a railroad, work for "Last pre-retirement non-railroad employer" (LPE), and work in self-employment affect payment in different ways. This collection obtains information to determine whether claimed self-employment is really self-employment, and not work for a railroad or LPE.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the form and supporting documents can be obtained from Dennis Eagan, the agency clearance officer (312–751–4693). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, room 3002, New Executive Office Building, Washington, DC 20503.

Dennis Eagan,

Clearance Officer.

[FR Doc. 92–19047 Filed 8–10–92; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–30986; File No. SR–DTC–92–01]

July 31, 1992.

Self-Regulatory Organizations; The Depository Trust Company; Order Approving DTC's Proposed Rule Change Relating to Implementation of Commercial Paper Program

On February 10, 1992, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] The proposed rule change will make permanent DTC's current commercial paper ("CP") program in its Same-Day Funds Settlement ("SDFS") service. Notice of the proposal was published in the Federal Register on March 4, 1992.[2] Eight comment letters were received.[3] In response to these comments, DTC filed Amendment No. 1 to the proposed rule change, which was published in the Federal Register on July 9, 1992.[4] One comment letter to Amendment No. 1 was received.[5] As discussed below, the Commission is approving DTC's proposal.

I. Description

DTC is proposing to make permanent SDFS processing for eligible CP issuances. As more fully described below, DTC's SDFS CP program will be substantially similar to the system that was approved temporarily in October, 1990.[6]

[1] 15 U.S.C. Sec. 78s(b)(1).

[2] Securities Exchange Act Release No. 30410 (February 25, 1992), 57 FR 7826.

[3] *See* letter from Arthur L. Herold, Partner, Webster, Chamberlain & Bean, to Jonathan G. Katz, Secretary, Commission (March 13, 1992); letter from C. Amos Mitchim, Director—Cash Management, BellSouth Corporation, to Jonathan G. Katz, Secretary, Commission (March 17, 1992); letter from R.L. Walton, Assistant Treasurer, Unocal Corporation, to Jonathan G. Katz, Secretary, Commission (March 19, 1992); letter from Kathleen M. Gibson, Attorney, Bell Atlantic Network Services, Inc., to Jonathan G. Katz, Secretary, Commission (March 20, 1992); letter from C. Amos Mitchim, Director—Cash Management, BellSouth Corporation, to Jonathan G. Katz, Secretary, Commission (March 24, 1992); letter from Arthur L. Herold, Partner, Webster, Chamberlain & Bean, to Jonathan G. Katz, Secretary, Commission (March 25, 1992); letter from Ronald M. Thalmeier, Vice President, The First National Bank of Chicago, to Jonathan G. Katz, Secretary, Commission (March 25, 1992); letter from George Brakatselos, Vice President, Public Securities Association, to Jonathan G. Katz, Secretary, Commission (March 25, 1992).

[4] Securities Exchange Act Release No. 30863 (June 26, 1992), 57 FR 30518.

[5] Letter from Roger W. Heinz, Chair, Governmental Relations Committee, Treasury Management Association, to Jonathan G. Katz, Secretary, Commission (July 24, 1992).

[6] See Securities Exchange Act Release No. 28518 (October 5, 1990), 55 FR 42114 (Order temporarily approving the SDFS CP program until April 30, 1992). See also, Securities Exchange Act Release No. 28424 (September 11, 1990), 55 FR 38428 (raising the adjustable net debit cap multiplier to 15 times the required and voluntary contributions to the SDFS portion of the Participants Fund ("SDFS fund") from 10 times the required and voluntary contributions); the adjustable net debit cap multiplier was later amended in Securities Exchange Act Release No. 29604 (August 23, 1991), 56 FR 43048, to its present formula described in the text; Securities Exchange Act Release No. 28515 (October 3, 1990), 55 FR 41401 (permitting families of accounts in the SDFS system, permitting participants to pledge securities against payment in SDFS, and capping the SDFS Fund at $400 million). This was temporarily extended until April 30, 1992, in Securities Exchange Act Release No. 30555 (April 3, 1992), 57 FR 12533. These proposed rule changes were approved temporarily until July 31, 1992 in Securities Exchange Act Release No. 30649 (April 29, 1992), 57 FR 19319.

A. Eligibility Criteria

CP eligible for the DTC program generally will be CP rated in one of the top two rating categories by two of five nationally recognized statistical rating organizations ("NRSROs").[7] If only one of these NRSROs rates an issuer's CP in one of the two top rating categories, DTC may make such issues eligible if at least one other agency gives the issuer's program an investment-grade rating.[8]

If, after CP becomes eligible, an NRSRO warns that a particular issuer's CP may be downgraded, DTC nevertheless will continue accepting new issuances of such CP. For SDFS collateral valuation purposes, however, DTC will devalue paper of that issuer in the DTC system to zero if a downgrading of one notch by the NRSRO issuing the warning would cause the CP to fall below DTC's eligibility criteria. To prevent such an action from creating liquidity concerns for its participants, DTC will devalue the CP to zero on the day after such downgrading occurs. If CP is actually downgraded below the rating for eligibility, DTC will discontinue accepting new issuances of such CP, but will allow existing CP of the issuer to remain eligible for depository services until it matures.

B. SDFS Controls

The fundamental risk in the SDFS system is that a participant will default on its payment obligation. To minimize this risk, DTC proposes to subject CP transactions to the following controls and safeguards currently incorporated into the SDFS system: (1) Net debit collateralization, (2) SDFS fund, (3) net debit caps, (4) receiver-authorized deliveries, (5) net and net-net settlement, (6) families of accounts, and (7) valued pledges. Moreover, DTC will continue to monitor its SDFS service and controls and, if necessary, will modify its SDFS service and controls and add further safeguards to minimize systemic risks associated with a CP issuer's default. These safeguards are discussed below.

1. Net Debit Collateralization. This control requires a participant to maintain in its account at all times during the processing day until settlement is completed, collateral at least equal in value to the participant's net settlement debit. The chief source of collateral is the securities received versus payment from other participants that created the net settlement debit. Additional sources are the participant's contribution to the SDFS fund and any securities in the participant's account other than those received versus payment that day that have been designated as collateral by the participant (*e.g.*, a dealer participant's inventory). In the event the collateral in the account is insufficient to permit completion of the proposed delivery or receipt, DTC will block the delivery and recycle the transaction until the participant has collateral with value sufficient to cover any net debit in its account. The value of collateral is based on current market values of the securities comprising the collateral less a "haircut" of generally 2%.[9] With respect to transactions versus payment, DTC always stands between the deliverer and designated receiver as a purchaser of the securities, to protect deliverers and establish its legal basis to pledge the collateral securities if necessary.

2. SDFS Fund. The SDFS fund is a ready source of cash or collateral for DTC to draw upon in the event of a participant default. Each participant in the SDFS system must contribute to the SDFS fund an amount equal to the greater of $250,000 or 5% of its average daily gross SDFS debits and credits during the prior month. At a minimum, $200,000 of the deposit must be in cash, and the remainder may be in certain types of liquid securities.[10] In addition to required deposits, participants may deposit more cash or securities in order to increase their SDFS collateral and adjustable net debit cap ("voluntary contributions"). DTC pays interest on required and voluntary cash deposits according to the rate it earns on overnight repurchase agreements, and passes through interest received on deposited securities. In October, 1990, the Commission approved, on a temporary basis, a proposal by DTC to cap the SDFS fund at $400 million. Under this proposal, the level of a participant's required contribution to the SDFS fund may fall below the 5% level described above in the event the dollar amount of the gross daily activity in the SDFS system exceeds $8 billion.[11]

In addition to providing liquidity, the SDFS fund also "self-insures" risks in the SDFS system, but only to the extent of participants' required deposits. In the event of participant default in which DTC suffers a loss, DTC may allocate the loss among certain participants by assessing the SDFS fund on a pro-rata basis. Participants' required deposits can be used repetitively for this purpose, and they must replace their required deposit to cover the loss and restore the fund.[12]

3. Net Debit Caps. In order to protect against the potential risk of participant default, DTC will establish a "net debit cap" for each participant. DTC will set each participant's net debit cap at the lesser of:

(1) An adjustable fund-based cap that is:

- Calculated as a multiple of the participant's required and voluntary contributions to the SDFS fund;[13] and

(2) A fixed credit-based cap that itself is the lesser of:

- 75% of DTC's liquidity resources, including lines of credit with potential lenders;
- An amount, if any, determined by the participant's settling bank; and
- An amount, if any, determined by DTC.

The adjustable fund-based cap protects against abnormal intra-day net debit peaks that are out of line with a participant's prior month's average daily activity level, the basis for the participant's required deposit to the

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[7] The term "nationally recognized statistical rating organization" is used in the Commission's uniform net capital rule [17 CFR 240.15c3–1(c)(2)(vi)(E), (F), and (H) (1990)]. The Commission's Division of Market Regulation ("Division") responds to requests for NRSRO designation through no-action letters. Currently, the Division has designated five NRSROs: Standard and Poor's Corp. ("S&P"); Moody's Investors Service Inc. ("Moodys"); Fitch Investor Services, Inc.; Duff and Phelps, Inc.; and, with respect to debt issued by banks, bank holding companies, United Kingdom building societies, broker-dealers, broker-dealers' parent companies, and bank-supported debt, IBCA Limited and its affiliate, IBCA Inc.

[8] For example, S&P's and Moodys' investment grade ratings for CP range from A–1 to A–3 and from P–1 to P–3, respectively.

[9] DTC will determine the fair market value of the CP being processed through the SDFS system on a daily basis by monitoring the interest rates at which CP is being issued on a particular day.

[10] Under DTC's rules, a participant's contribution to the participants fund may be satisfied by depositing unmatured debt obligations of the United States or instrumentalities of the United States, municipal general obligation bonds that are rated in the top two rating categories by an NRSRO, or non-convertible corporate debt rated in the highest category by an NRSRO. However, the first $200,000 of such deposits must be made in the form of cash. See DTC Rule 4.

[11] For a more detailed explanation of this proposal and its potential effect on DTC and its participants, see Securities Exchange Act Release No. 28515 (October 3, 1990), 55 FR 41401. That order was reaffirmed and extended until April 30, 1992, in Securities Exchange Act Release No. 28515 (April 3, 1992), 57 FR 12533 and again until July 31, 1992, in Securities Exchange Act Release No. 30649 (April 29, 1992), 57 FR 19319.

[12] Participants may limit their liability by withdrawing from DTC, provided they do so within the time frames and in the manner specified by DTC's rules and procedures. Participants who exercise their right to withdraw from DTC can limit their liability for pro-rata assessments to twice the amount of their required contributions to the SDFS fund.

[13] *See* Securities Exchange Act Release No. 29604 (August 23, 1991), 56 FR 43048.

SDFS fund. An underwriter's distribution of an unusually large new securities issue is a typical cause of such peaks. Participants whose net debits approach or reach their caps during the processing day can lower their net debits and thus stay under their caps by wiring fed funds to DTC. Alternatively, they can raise their adjustable caps as appropriate by making voluntary deposits to the SDFS fund.

The first element of the fixed credit-based cap reduces the possibility that failures to settle by more than one participant would cause DTC to exceed its lines of credit. That element presently equals 75% of (a) a $150 million line of credit with Bankers Trust Company (as yet unused), (b) a $50 million internal line of credit against DTC's unclaimed dividend and interest account, and (c) $220 million cash deposits to the SDFS fund. Thus the "liquidity cushion" between the fixed cap ($315 million) and DTC's liquidity resources ($420 million) is presently $105 million. For any individual participant, this liquidity cushion is in addition to the cushion between its actual net debit and the fixed cap.[14]

4. Receiver-Authorized Deliveries. The receiver-authorized delivery ("RAD") control permits each SDFS participant to control transfers of securities and funds to its account. Under RAD, a participant may set a dollar limit on securities deliveries and payment orders which are directed to its account by any other participant. If the delivery or payment order exceeds this limit, DTC will not post the debit or credit to the participant's account until the participant approves the delivery or payment order. A participant can set a different dollar level for each other participant, thus establishing a bilateral credit limit within SDFS. Thus, the RAD control enables the participant to exercise its own credit judgment of each other participant. It also reduces the need for the participant to reclaim (return) erroneous transactions to originators after they are posted to its account. This, in turn, reduces the incidence and financial impact of reclamations attempted by the participant.

5. Net and Net-Net Settlement. The SDFS system provides three levels of debit reduction in the course of daily money settlement. On the first level, a participant's gross settlement debits due to its "receive versus payment" obligations from other participants are reduced by its gross settlement credits due to its "delivery versus payment" obligations to other participants. The resulting net settlement debit is that of the participant as a counterparty. On the second level, the participant's counterparty net settlement debit is reduced due to transactions not involving any other participant. These transactions serve as settlement progress payments made by the participant itself and, to a much lesser, sporadic extent, securities principal payments made to it by issuers' redemption agents.[15] The resulting final net debit is the participant's settlement obligation to DTC, and is the net debit DTC would have to deal with should the participant fail to settle.

On the third level, the participant's final net settlement debit is merged with the final net settlement debits or credits of other participants who use the same settling bank for end of day settlement with DTC. The resulting final net-net settlement debit is the settling bank's obligation to DTC at end of day. It is the net-net debit DTC would have to deal with should the settling bank fail to settle on time.[16]

6. Family of Accounts. DTC's SDFS service permits participants with multiple SDFS accounts to organize such accounts into one or more families of accounts. Under this service, those participants that organize their accounts into a family of accounts are permitted to aggregate the collateral and net debit caps relating to each of such accounts.[17] This, in turn, may reduce the possibility that a participant's transactions may be blocked for reasons unrelated to the risk exposure associated with such transactions.

7. Valued Pledges. DTC's SDFS service permits participants to effect a pledge versus payment transaction through SDFS. Prior to implementation of this option, DTC participants effecting pledge transactions in the SDFS system could not deliver securities for pledge against payment at DTC. Instead, the funds associated with the pledge had to be paid ex-DTC or as a distinct payment order transaction at DTC.

C. Special CP Modifications

DTC will continue its modification of its standard SDFS controls by prohibiting participants from transferring a CP "received-versus-payment" transaction that day in a free-of-payment transaction unless the participant either has paid its net settlement debit or is in a net credit position that day. This restriction assures DTC that a participant's CP received versus payment transactions remain available to be resold or pledged to deliverers until the participant settles with DTC. Although CP trades normally range in size from $5 million to $50 million, CP trades often can range up to $100 million to $200 million. To reduce the chance of CP transactions being blocked and recycled, DTC will limit the maximum size of valued CP deliveries, pledges and releases in the SDFS system to $50 million, the limit on government securities deliveries in the Federal Reserve's book-entry system.[18] If a participant inadvertently enters a valued transaction with a face value of more than $50 million, DTC will reject it.

D. Redemption Processing

DTC will process CP redemptions in the following manner. The night before the date CP matures, DTC will sweep maturing CP from participants' accounts and will initiate book-entry deliveries of matured CP for payment from the accounts of participants holding the CP at the close of business on the day before maturity date to the accounts of participants acting as paying agents for that issue.[19] DTC will sweep matured CP whether or not it is pledged or segregated, but will hold in escrow the maturity proceeds collected on pledged CP until its release from that status.

A maturity presentment will not be posted to a participant's account if the PA bank's collateral monitor or net debit

[14] Letter from Richard B. Nesson, General Counsel and Senior Vice President, DTC, to Judy Poppalardo, Assistant Director, Division, Commission (March 13, 1992).

[15] These intraday deliveries serve to reduce participants' debits to keep each participant's debit levels below its individual net debit cap. In doing so, they also reduce the probability of systemic gridlock and reduce participant, end of day net debits owed to DTC.

[16] The daily average results for 1991 were as follows: (1) all participants' counterparty net settlement debits were $3,453 million, or 12.4% of all participants' gross settlement debits of $27,822 million;(2) all participants' final net settlement debits were $1,236 million, or 4.5% of all participants' gross settlement debits; and (3) all settling banks' final net-net settlement debits were $260 million, or less than 1% of all participants' gross settlement debits.

[17] A DTC participant that maintains a family of accounts is liable to DTC as a principal for activity in each of those accounts. DTC will not permit a transaction to proceed if the participant's available collateral in the entire family of accounts is insufficient to offset the resulting debits, on an aggregate basis, in the family of accounts.

[18] *See* Board of Governors of the Federal Reserve System, Interim Policy Statement Regarding Risks on Large-Dollar Wire Transfer Systems, 52 FR 29255 at 29261 (August 6, 1987). DTC chose this limit to mirror the Federal Reserve's book-entry system limitation, although they were not bound to it. Any future change in this $50 million limit, however, would require Commission and Federal Reserve Board approval.

[19] Under DTC's proposal, an issuer must designate one DTC participant as its paying agent ("Paying Agent" or "PA") to whom CP will be presented at maturity.

cap does not allow it to be posted. The RAD procedure, however, will not be available to PAs in connection with maturity presentment processing. If a PA bank's collateral monitor or net debit cap prevents a maturity presentment from being posted, the maturity presentment will pend in the SDFS system in accordance with the standard SDFS procedures and as discussed below.

DTC will recycle maturity presentments until approximately five minutes after the cutoff time for approval of deliveries under RAD procedures. Maturity presentments not posted to participant accounts by the recycle cutoff time will be dropped from the SDFS system and reported to the affected participants. DTC will not clear matured CP from its records at the end of the processing day if it is still in presenting participants' accounts. Instead, DTC automatically will initiate valued maturity presentments of the matured CP the next day to the PA bank's account.

If a PA bank determines to refuse payment on maturity presentments because of an issuer default, the PA must notify DTC before 3 p.m. (Eastern Time), the traditional deadline for such decisions, and DTC will inform its participants through a PTS broadcast message. In this case, or if DTC confirms an issuer's bankruptcy before 3 p.m., DTC will recredit the maturity presentments to presenting participants' accounts, thus offsetting settlement credits in those accounts without regard to SDFS controls. In the event of an issuer default or bankruptcy after 3 p.m., DTC will look to the PA, as principal, to satisfy the issuer's payment obligation. In the event the PA fails to satisfy its payment obligations, including the payment of the defaulting CP issuer's maturity presentments, DTC will deem the PA participant to be in default, and DTC will follow special default procedures.[20] Assuming the PA pays DTC for the matured CP, the PA would be required to claim against the issuer who defaulted.

Consistent with DTC's proposed cap on the dollar value of any single delivery, when initiating maturity presentments, DTC will break down a participant's maturing position with a face value of more than $50 million into multiple maturity presentments with $50 million face values and a maturity presentment for any remaining face value.[21] DTC will allot each maturity presentment's settlement value in the same proportion that each maturity presentment's face value bears to the total face value.

E. Participant Default Procedures

Under its rules, DTC will not transfer securities free or for payment if the deliverer's and receiver's collateral monitor level, as a result of the transfer, would result in a negative number and if such transfer exceeded their net debit caps.[22] If the transaction occurs after DTC's cut-off time (*i.e.*, after 4:40 p.m.) the counterparty must be the deliverer's or receiver's settling bank.[23]

Even if a transaction for value meets all of these requirements, it will not be deemed to be final under DTC's rules until: (a) DTC determines that the receiver has a credit balance at the end of the day; (b) the receiver pays its negative settlement balance; or (c) the receiver transfers, withdraws or pledges the securities and all of the other tests described above are satisfied. Until a transaction is final, DTC retains intraday title to securities in transfer.

In general, if a DTC participant fails to pay its net settlement debit at the end of the day,[24] DTC will attempt to manage the default to reduce the potential for a cascade of other participant defaults. Among other things, DTC will attempt to cover or finance the amount of the default on the day of the default and, the next day, allocate any losses that may result if the default has not been cured. More specifically, DTC may: (a) pledge any or all net additions (*i.e.*, SDFS securities subject to incomplete transactions and SDFS securities finally credited to a participant to the extent they do not comprise its minimum amount) [25] to non-defaulting participants (up to the amount of their credit balances) or a bank to secure a loan to DTC or (b) resell any of the defaulting participant's net additions that are subject to incomplete transactions to the deliverer, to the public, or to DTC.

Even though a defaulting participant may have converted an incomplete transaction into a complete transaction by redelivering the securities, DTC may take other securities from the defaulting participant equivalent to the securities so coverted ("deemed net additions") that are subject to incomplete transactions and resell them to the deliverer.[26] In that case, DTC will increase the defaulting participant's gross debit balance by the greater of (a) the settlement value of the resale; or (b) 100% of the fair market value of such securities. After this action, DTC may buy-in the redelivered securities and charge any loss or pass through any gain to the defaulting participant.[27]

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[20] *See* note 27, *infra*.

[21] This $50 million limit on maturity presentments was intended initially to equal the Fedwire limit of $50 million for any single Fedwire transfer. There is no Federal Reserve Bank of New York requirement, however, that DTC limit maturity presentments to $50 million. *See* note 18, *supra*.

[22] See DTC Rule 10.

[23] This allows participants to raise funds by pledging securities to their settling bank.

[24] A participant fails to settle its net debit when DTC receives a refusal message from the participant's settling bank or when the settling bank fails to settle its net-net debit on time.

[25] A participant's minimum amount with respect to any issue of securities is equal to such amount as DTC may determine, or as the participant may inform DTC, constitutes customer securities. See DTC Rule 9.

[26] DTC may not take any securities in the opening daily balance in the account except for those securities the participant has designated as available for collateral. DTC also may not take any securities in the segregated account.

[27] More specifically, in the event of participant default, DTC will take the following steps in order to achieve settlement: (1) Use the participant's cash deposit to the SDFS fund, (2) use all participant's cash deposits to the SDFS fund, (3) use mandatory and voluntary securities deposits to the SDFS fund and pledge them to a line of credit bank, (4) use SDFS securities collateral in the defaulting participant's account (other than securities that are the subject of incomplete deliveries to the account that day which might be resold to deliverer the next day) and pledge it to a line of credit bank (DTC will not use securities in the participant's segregated account or minimum account), and (5) finally, DTC will use SDFS securities that are the subject of incomplete deliveries to the defaulting participant's account which might be resold to deliverers the next day and pledge them to a line of credit bank.

If DTC's line of credit is not adequate to cover the default or if DTC knows the defaulting participant is insolvent, DTC will make net credit reductions for participants who initiated SDFS securities deliveries to the defaulting participant that day. DTC will limit the reduction to the amount of the net credit due to transactions with the defaulting participant.

As an alternative to net credit reductions, DTC will resell to deliverers SDFS securities that are the subject of incomplete deliveries to the defaulting participant, charge the deliveries' settlement accounts, and credit the defaulting participant's settlement account. DTC will resell on a last-in, first-out ("LIFO") basis incomplete-delivery securities where all of the securities remain in the defaulting participant's account. Then, as necessary, DTC will resell incomplete-delivery securities where only a portion of the securities remain in the defaulting participant's account in a sequence based on the percentage of securities remaining and their market value.

If the resales would occur late in the day, DTC will attempt not to disrupt the SDFS settlement process by reselling securities that would transform participants' net credits into net debits, or by reselling securities to participants already in net debit positions. Instead, DTC may borrow from participants who initiated deliveries to the account of the defaulting participant that day. Such borrowing will be secured by the pledge of the securities previously delivered to the defaulting participant. DTC will take this step only after determining in accordance with the sell sequence described in the preceding paragraph that it will resell the securities or return payment orders to deliverers the next day if the participant has not cured its default.

If the defaulting participant is solvent and wires Fed funds to DTC by 10 a.m. the next business day, DTC will repay the loan from the line of credit bank, obtain the release of any pledged SDFS securities that were pledged to the bank, restore the SDFS fund, and deliver the pledged SDFS securities to the defaulting participant. DTC will charge interest to the defaulting participant and pay the interest to the SDFS fund (since participants earn interest on their cash deposits to the SDFS fund) and, if applicable, to the line of credit bank. If emergency net credit reductions were necessary on the day of defualt, DTC will credit the SDFS accounts of participants whose net credits were reduced the prior day and will pay interest to those participants whose net credits were reduced the prior day.

If the defaulting participant does not wire Fed funds to DTC by 10:00 a.m. or is insolvent, DTC will allocate any losses resulting from the default to those participants who delivered securities to the defaulting participant. DTC will effect this loss allocation by reselling to deliverers SDFS securities which are the subject of incomplete deliveries to the defaulting participant's account (to the extent DTC did not effect such resales in the prior afternoon), and will charge the deliverers' settlement accounts and credit the defaulting participant's settlement account accordingly. If necessary, DTC may pledge securities to its line of credit banks to fund the default pending settlement of liquidation transactions in the defaulting participant's account.

F. Issuer Notification Upon Failure of Issuer Paying Agent

Under SDFS failure-to-settle procedures, if on the business day following the failure of an SDFS participant to settle its net debit obligation to DTC, the participant is still unable to settle, DTC could eliminate the new debit by reselling to the deliverers securities whose receipt for value by the failing participant had resulted in its net settlement obligation to DTC. If the failing participant were a PA of a CP issuer, it is possible that under DTC's SDFS procedures, matured CP could be resold to the DTC participants that had presented (*i.e.*, delivered) it to the failing PA for payment the previous day and who would presumably present the CP to the issuer for payment. To help minimize the risk of the need for double payment by a CP issuer, Amendment No. 1 to the proposed rule filing [28] established the following procedures:

1. DTC will notify CP issuers if their PA has failed to settle, as follows:

a. If by not later that 12:00 noon (all times are Eastern Time) on the DTC business day following the settlement day for which a PA has failed to settle, the PA has not yet settled with DTC, DTC will begin to contact each issuer of DTC-eligible CP identified on DTC's files with that PA via facsimile transmission.[29]

b. The facsimile transmission notice will advise the issuer that its PA has failed to settle and invite any issuer desiring information concerning the impact of the failure-to-settle on the presentment of its matured paper to contact DTC at special telephone number(s) beginning at 4 p.m. that day.

c. Beginning at 4 p.m., DTC will respond to telephone inquiries from each issuer contacted earlier, with information on the aggregate dollar amount of maturity presentments of its CP for which the PA failed to pay DTC.[30] DTC will arrange also to send to issuers (via facsimile, mail, or physical pick up at DTC) detailed information on each CP maturity transaction not settled, including the identity of the DTC participant to which the matured CP was resold.

2. DTC will establish and maintain a complete file of contact information for CP issuers. To do so, DTC will require each PA to povide DTC with the following information concerning each CP issuer for which it acts, at the time the issuer's CP program is sought to be made DTC-eligible:

a. The name and telephone number *and* facsimile transmission number of a senior official in the treasurer's office of the issuer and,

b. A backup contact name and telephone number.[31] Periodically, the PA will be asked to confirm the accuracy of information previously provided.

G. Concurrent Issuer and Participant Default

The particular risk to DTC in processing CP is an issuer's default combined with a participant's failure to settle deliveries for payment of that issuer's CP. In this event, DTC will modify the sequence in which it allocates collateral and reduces net settlement debits in a defaulting participant's account. As described above, in the event of a participant default, DTC will resell securities and return payment orders to deliverers on a LIFO basis. In the event of an issuer default on the same day, DTC will resell and sell out securities other than a defaulting issuer's CP before reselling the defaulting issuer's CP or returning payment orders. This sequence attempts to reduce the possibility of multiple failures to settle after an issuer's default by returning to participants marketable collateral to the maximum extent possible.

Second, in the event of an issuer's default before 3:00 p.m. DTC will automatically recredit devalued maturity presentment CP to the presenter and new issuance CP to the issuing agent, and participants will then settle this matter outside DTC. DTC will not automatically recredit devalued secondary market CP to the delivering participant.

In the event of an issuer's default after 3 p.m., DTC will not automatically recredit devalued maturity presentment CP, new issuance CP or secondary market CP, but will expect the PA to pay DTC amounts due on the presented CP, even though the issuer has defaulted. If the PA fails to settle its payment obligation, DTC will apply its default procedures, as modified to limit the potential for other participant defaults. DTC will simulate application of the default procedures it will use the next day in the event the default is not cured. DTC will determine from this simulation whether it will be able to eliminate completely the participant's net debit the following morning by reselling to deliverers and selling out securities other than the defaulting issuer's CP, or whether it will have to resell some or all of the defaulting issuer's CP return payment orders as well.

For the portion of the participant's net debit that DTC would be able to eliminate the next day by reselling to

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[28] Securities Exchange Act Release No. 30863 (June 26, 1992), 57 FR 30518.

[29] DTC will notify promptly CP issuers affected by a PA failure in situations where DTC has actual knowledge that the PA's failure to settle is caused by that PA's insolvency rather than due to an operational or communications problem as generally is the case. Letter from Richard B. Nesson, General Counsel and Senior Vice President, DTC, to Judith Poppalardo, Assistant Director, Division, Commission (July 29, 1992).

[30] DTC will review its ability to respond to issuer questions prior to four hours after issuers have been notified on the PA's failure to settle with DTC. In particular, DTC will review its ability to respond to issuer inquiries in situations where the PA's failure to settle is due to the insolvency of that PA. *Id.*

[31] DTC will also keep on file a second telephone and fax number, most likely the home telephone and fax numbers, of each such senior official, to be used in situations where the senior official cannot be reached at the office. Letter from Richard B. Nesson, General Counsel and Senior Vice President, DTC, to Judith Poppalardo, Assistant Director, Division, Commission (July 29, 1992).

deliverers and selling out securities other than the defaulting issuer's CP, DTC will borrow overnight against its credit lines, secured by the pledge of those securities. If some net debit remains that DTC would be able to eliminate only by reselling the defaulting issuer's CP and returning payment orders to deliverers, DTC will borrow overnight from the deliverers, with such loans collateralized by the pledge of the defaulting issuer's CP.

If the defaulting participant settles the following morning, DTC will repay the delivering participants. If the defaulting participant cannot cure the default, DTC will allocate any loss incurred by reselling the defaulting issuer's securities to the delivering participants.

H. Phased Implementation and Disaster Recovery Capabilities

DTC's proposal recognizes that DTC cannot, at this time, assure participants that DTC's CP processing services will be available in spite of a disaster affecting DTC's primary processing site. Accordingly, the proposal would limit eligible CP to prevent participants from relying on DTC for CP services to the exclusion of existing CP clearance and settlement procedures. In this manner, existing CP clearance and settlement procedures will serve as a primary back-up to DTC facilities in the event a disaster disables those facilities.

DTC's capabilities to recover from a disaster such as a fire or flood disabling its computer center are thorough and frequently tested.[32] They involve switching external and internal communication lines for all DTC systems from its New York City location to a back-up facility in Philadelphia. DTC believes any catastrophe disabling its computer center should be transparent to its participants after an 18 to 24 hour recovery period required to move data files to Philadelphia.[33]

DTC has been developing the means to reduce the recovery period for the SDFS system to three hours or less by the fourth quarter of 1992. It currently is building a back-up data center, which DTC expects to become fully operational during the fourth quarter of 1992, at a site in New York City different from the current location of its operations center. Until this disaster recovery site is fully operational, DTC will operate its CP program to encourage PAs to retain the ability to make physical delivery of CP if necessary.

Until implementation of DTC's same-day disaster recovery facility, DTC and its participants will use interim recovery procedures developed by DTC. Under these interim procedures, depending upon the time of day a disaster occurs and the volume of CP already processed in SDFS up to that time, either DTC will complete settlement for the transactions then processed in SDFS with the expectation that participants will settle any remaining business physically, or participants will settle all business that day physically.[34]

II. Written Comments Received

As stated above, the Commission received eight comment letters responding to DTC's initial version of the proposed rule change and one response to DTC's Amendment No. 1. Two letters supported permanent approval of the CP program, generally noting positive results since it was first implemented.[35] The other six letters, citing the complexity of the program and the different relationship between CP issuers and trustees under the DTC system versus the physical certificate system, expressed concern that the DTC CP program could pose greater liability to CP issuers due to PA failure than the current physical certificate system. These issuers therefore requested more time to comment on DTC's proposal.[36]

The primary concern of these CP issuers is that a DTC participant, acting as PA for that issuer, could fail prior to making payments on matured CP, thus leaving the issuer responsible to make those payments, even if the issuer already has forwarded funds to the failing PA.[37] A related concern of the issuers involves finality of settlement on matured CP.[38] Because DTC will reverse payments made on settlement date on a LIFO basis,[39] the issuers believe this causes greater uncertainty about finality of settlement than the physical certificate system and therefore serves as a disincentive to participating in DTC's system.

DTC spoke with issuer representatives about these concerns.[40] As a result of these conversations, DTC amended its proposal to include issuer notification procedures to be followed in the event of a participant failure to settle.[41] As described above, these proposed procedures include, among other things, next day notification of each issuer identified on DTC's files as associated with a PA that has failed to settle.[42]

The Treasury Management Association ("TMA") responded to DTC's proposed issuer notification procedures by suggesting that DTC provide issuers with same day notice of PA failure to settle and by stating their belief that DTC's CP settlement procedures inequitably placed the risk of PA failure on the issuer.[43] In

[32] In the event of a power blackout, DTC utilizes diesel powered generators and an uninterrupted power supply to maintain its transaction processing operations.

[33] DTC currently maintains a separate back-up facility in Philadelphia and tests the transfer of its operations from its main site to its back-up facility on a quarterly basis.

[34] For a more complete description of DTC's interim disaster recovery procedures, *see* Securities Exchange Act Release No. 28518 (October 5, 1990), 56 FR 42114. Once the One Liberty Plaza facility becomes fully operational, the time of day at which a disaster occurs will not dictate the procedures to be followed by PAs.

[35] Letter from Ronald M. Thalmeier, Vice President, The First National Bank of Chicago, to Jonathan G. Katz, Secretary, Commission (March 25, 1992); letter from George Brakatselos, Vice President, Public Securities Association, to Jonathan G. Katz, Secretary, Commission (March 25, 1992).

[36] Letter from Arthur L. Herold, Partner, Webster, Chamberlain & Bean, to Jonathan G. Katz, Secretary, Commission (March 13, 1992); letter from C. Amos Mitchim, Director-Cash Management, BellSouth Corporation, to Jonathan G. Katz, Secretary, Commission (March 17, 1992); letter from R. L. Walton, Assistant Treasurer, Unocal Corporation, to Jonathan G. Katz, Secretary, Commission (March 19, 1992); letter from Kathleen M. Gibson, Attorney, Bell Atlantic Network Services, Inc., to Jonathan G. Katz, Secretary, Commission (March 20, 1992); letter from C. Amos Mitchim, Director-Cash Management, BellSouth Corpration, to Jonathan G. Katz, Secretary, Commission (March 24, 1992); letter from Arthur L. Herold, Partner, Webster, Chamberlain & Bean, to Jonathan G. Katz, Secretary, Commisson (March 25, 1992).

[37] Such a scenario could occur where (1) a CP issuer pays its PA on the day its CP matures, and (2) the PA fails before it pays the note holders. Letter from Arthur L. Herold, Partner, Webster, Chamberlain & Bean, to Jonathan G. Katz, Secretary, Commission (March 25, 1992).

[38] *Id.*

[39] In the event a DTC participant fails to settle, DTC will borrow from its liquidity resources the funds necessary to make settlement. If by 12:00 noon on the day after settlement, the participant still has not settled with DTC, DTC will begin reversing transactions completed on settlement day.

[40] Letter from Richard B. Nesson, General Counsel and Senior Vice President, DTC, to Judy Poppalardo, Assistant Director, Division, Commission (March 26, 1992).

[41] Letter from Richard B. Nesson, General Counsel and Senior Vice President, DTC, to Ester Saverson, Branch Chief, Division, Commission (June 15, 1992). These procedures were published as Amendment No. 1 to the proposed rule change in Securities Exchange Act Release No. 30863 (June 26, 1992), 57 FR 30518.

[42] Securities Exchange Act Release No. 30863 (June 26, 1992), 57 FR 30518.

[43] Letter from Roger W. Heins, Chair, Government Relations Committee, Treasury Management Association, to Jonathan G. Katz, Secretary, Commission (July 24, 1992).

particular, the TMA requested that DTC retain home contacts for each CP issuer, notify promptly upon PA failure to settle, respond to issuer telephone inquiries one hour after such notice is given, and provide computer-based on-line access to information related to settlement problems.[44] In addition, the TMA stated that if failure occurs after the netting settlement with DTC, all transfers should be final.[45]

III. Discussion

Section 17A of the Act provides that the rules of a clearing agency must promote the prompt and accurate clearance and settlement of securities transactions.[46] Section 17A also provides that such rules must promote the safeguarding of funds and securities in the possession or control of a clearing agency, or for which it is responsible.[47] As discussed below, the Commission believes that DTC's proposal is consistent with these goals.

Current CP issuance, clearance, and settlement procedures, outside of DTC's CP program, are costly, inefficient, and labor-intensive. For example, in the case of dealer-placed CP, an issuer typically will inform the dealer of the total dollar amount of CP that it desires to sell on the morning of the day of issuance. The dealer's sales force then will sell the issuer's CP until approximately 12:30 p.m. (Eastern Time). After completing such sales, the dealer will inform the issuer's agent bank of the total dollar amount and maturity of CP sold, identify the various purchasers of the CP, and instruct the bank to deliver the CP via messenger to the dealer's clearing bank. The dealer's clearing bank typically will receive the CP by 2:15 p.m. (Eastern Time), and will deliver the CP via messengers to investors' custodial banks by 3:00 p.m. (Eastern Time).

The Commission believes DTC's CP program will reduce the costs and inefficiencies associated with the physical clearance and settlement of CP transactions by bringing the benefits of centralized, automated book-entry clearance and settlement to the CP market. The proposal was created to centralize book-entry settlement of CP, eliminate the need for issuers to print physical CP certificates, and to eliminate the need for dealers' clearing banks to check that they received the correct number of certificates in the proper denominations and that such certificates are in good deliverable form. The proposal also will eliminate many labor intensive functions and thereby reduce labor costs. For example, issuers and dealers will not be required to messenger physical certificates to various bank within a short period of time. Because many CP dealers already participate in the SDFS system, their CP-related money settlement obligations could be netted with their other SDFS-related money settlement obligations, thus reducing the number and dollar amount of these obligations.

The Commission also believes that DTC's proposal promotes the safeguarding of funds and securities by reducing the potential for participant default. In the physical processing environment, CP issuers, dealers, and investors are subject to a substantial degree of credit risk.[48] For example, issuing agent banks typically deliver CP before receiving payment from the dealer's clearing bank. Similarly, the dealer's clearing bank usually delivers CP to investors' custodial banks before it receive payment from these banks. This exposes these banks to the risk that dealers' and investors' banks will become insolvent before making payment to the issuing agent bank or dealer's clearing bank, or may refuse to pay these banks. The proposal provides a book-entry environment that effects transactions on a delivery-versus-payment basis, reducing the credit risk that issuers and dealers incur as a result of delivering securities before payment for such securities is received.

Other safeguards built into the SDFS system, as modified by DTC's proposal, also protect CP issuers, dealers, and investors against financial loss. For example, DTC establishes participation standards and prevents participants from incurring net debits that are unusually large in relation to their prior month's settlement activity by imposing adjustable net debit caps on their activity.[49] The system's fixed net debit cap is limited to not more than 75% of DTC's liquidity resources, including lines of credit with potential lenders.[50] The Commission believes DTC's current limits to it debit caps are adequate to prevent excessive exposure to DTC in the event of a participant default.

In addition, by requiring all transactions versus payment in the SDFS system to be fully collateralized, and by maintaining a participants fund composed of cash and liquid securities, DTC ensures that it has a sufficient amount of liquid collateral to draw upon in the event of a participant default. The Commission, however, remains concerned, for the reasons discussed below, about the cap on the SDFS fund and the increased risk exposure to DTC in the event of participant default as the volume of CP processed in the SDFS system increases. Although all transactions versus payment in the SDFS system are fully collateralized, the Commission is concerned that as the CP program expands, the SDFS fund may be insufficient to meet DTC's liquidity needs.

As DTC's CP program grows, so too does the risk of a concurrent participant failure and issuer default that could place significant demands on DTC's liquidity resources. The Commission understands, however, that since the CP program began, DTC has monitored worst case scenarios of participant failure and issuer default on each settlement date. DTC's liquidity cushion (*i.e.*, the difference between required deposits to the SDFS fund and the fixed net debit cap) was examined to determine dates when that "liquidity cushion" would have been penetrated if such a participant failure and issuer default had occurred. During the CP program's first fifteen months of operation, the fixed net debit cap was found to cover fully these failures over 99.9% of the participant failure and issuer default combinations. The liquidity cushion was exceeded in less than .003% of these participant failure and issuer default combinations.[51]

Although the percentage of the combinations of participant failure and issuer default that would penetrate DTC's liquidity cushion is small, the possibility of a combined large participant failure and large issuer default on the same date remains. To address this concern, DTC has represented that it will seek approval from the Commission prior to increasing its fixed net debit cap.[52] Finally, to

[44] *Id.*

[45] *Id.*

[46] 15 U.S.C. 78 q–1(b)(3)(F) (1988).

[47] *Id.*

[48] Credit risk is the risk that the credit quality of one party to a transaction deteriorates to the extent that it is unable to fulfill its obligations on settlement date.

[49] DTC's net debit cap on participant activity is based on the participant's effective rate of contribution to the SDFS fund. Securities Exchange Act Release No. 29604 (August 23, 1991), 56 FR 43048.

[50] Securities Exchange Act Release No. 29604 (August 23, 1991), 56 FR 43048.

[51] Letter from Richard B. Nesson, General Counsel and Senior Vice President, DTC, to Judy Poppalardo, Assistant Director, Division, Commission (March 13, 1992).

[52] Letter from Richard B. Nesson, General Counsel and Senior Vice President, DTC, to Ester Saverson, Branch Chief, Division, Commission (July 23, 1992). If, and when, DTC seeks to increase its fixed net debit cap, the Commission will review the adequacy and liquidity of DTC's available resources.

mitigate the systemic risk concerns that may arise in the event a CP issuer defaults on the same day that a participant fails to pay for the issuer's CP, DTC has altered the order in which deliveries made to the defaulting participant will be repledged to deliverers on the day of default.[53]

Additionally, as noted in a prior Commission order temporarily approving DTC's CP program in its SDFS service, [54] DTC believes that another safeguard against participant default is the quality of CP eligible for deposit at DTC. At the time of that order, the Commission stated that it would revisit DTC's CP eligibility standards in light of DTC's experience with the CP program and in light of the Commission's more stringent proposed rules defining securities eligible for mutual fund investment.[55]

During the first fifteen months of DTC's CP program, four issuer programs previously eligible for DTC's CP program were downgraded by an NRSRO to a level below DTC's eligibility standards.[56] In each case, on the day following announcement of the downgrading, DTC monitored its system to prevent any new CP issuances through DTC in these issues. Also, in each of those cases, DTC's procedures operated as they were designed, and end-of-day settlement was not disrupted.[57]

In light of DTC's experience with its CP program, and after considering the revised Commission Rule 2a–7, the Commission believes DTC's current eligibility standards for CP are adequate. Unlike the eligibility standards for securities in which a mutual fund may invest, DTC's CP program in its SDFS service should be designed to include the largest volume of high quality CP with the smallest risk posed to DTC. The Commission's concern with a mutual fund's investments is the risk to individual investors from funds seeking higher yields.[58] The Commission's concern with DTC's CP program in its SDFS system is that of systemic risk. Because DTC's procedures worked as they were intended during the temporary approval period, preventing downgraded CP from disrupting the service, and because of the expensive, labor intensive physical certificate alternative to DTC's system, the Commission believes DTC's current eligibility standards strike the correct balance between safety and the need to progress towards better methods of clearance and settlement of CP. If in the future DTC intends to expand its CP program to include a larger number of CP issues, the Commission will then revisit this issue.

The Commission continues to believe that DTC's proposal to phase CP into the SDFS system and to tie this phase-in to DTC's progress in establishing an off-site disaster recovery facility that can become fully operational within three hours after a system failure is prudent. As the Commission has previously stated in its first Automation Review Policy Statement, because of the impact systems failures have on public investors and broker-dealer risk exposure, it is appropriate for self-regulatory organizations to take certain steps to ensure that their automated systems have the capacity to accommodate present and reasonably anticipated volume levels, are not susceptible to internal or external threat, and respond adequately to localized emergency conditions, such as a power outage.[59] By developing its soon to be operational second site disaster recovery facility and by tying the expansion of the CP program to its progress in establishing such a facility, the Commission believes DTC is acting in an appropriate and prudent manner.

The Commission acknowledges concerns raised in the comment letters about a CP issuer's responsibility to make payments on matured CP if a DTC participant, acting as PA for that issuer, would fail prior to making payments to DTC on the matured CP. As a result of these issuer concerns, DTC proposed issuer notification procedures to be followed in the event of a participant failure to settle. In response, the TMA suggested further changes to the procedures, including same-day notification of a PA failure to settle. The TMA also restated its members' belief that CP settlement is less certain under DTC's CP program than under the physical certificate system.

The Commission believes DTC's notification procedures reasonably address concerns raised by the TMA. During the first eighteen months of CP operation, PAs failed to effect timely settlement with DTC on CP 74 times. None of these delays was the result of a PA insolvency, and in no case did DTC fail to receive payment by the morning of the day following the failure to settle.[60] DTC therefore believes and the Commission agrees that notification to issuers each time a PA fails to effect timely settlement on CP would be inappropriate. Instead, DTC has

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[53] The commission also notes that DTC's proposal may reduce the risk to the payments system created by intraday overdrafts associated with the current method of issuing and redeeming CP. For example, issuers redeem CP in the morning but are not paid for CP sold that day until later in the afternoon. This disparity in payment flows may create a daylight overdraft in the paying agent's bank account at its Federal Reserve Bank. In the interval between payment of redemption amounts and receipt of issuance proceeds, the Federal Reserve Bank is, in effect, extending credit to the paying agent bank. Thus, the Federal Reserve Bank is exposed to the risk that the paying agent bank may become insolvent before it repays the Federal Reserve Bank.

[54] Securities Exchange Act Release No. 28518 (October 5, 1990), 55 FR 42114.

[55] Investment Company Act Release No. 17589 (July 17, 1990), 55 FR 30329. In February, 1991, the Commission's Division of Investment Management adopted revised rule 2a–7 [17 CFR 240.270.2(a)(7) (1991)], which defined the term "eligible quality" to mean (i) in respect of a rated security, to mean a security which has been rated (or the issuer of which has been rated) by all NRSROs which have issued a rating with respect to the security (or issuer) in one of the two highest rating categories and (ii) in respect of an unrated security, to mean a security which has not been rated and whose issuer's other securities have not been rated less than eligible quality.

[56] The downgraded securities include USF&G, Mutual Benefit Life Insurance, United Telecommunications, and Columbia Gas. Letter from Richard B. Nesson, General Counsel and Senior Vice President, DTC, to Judith Poppalardo, Assistant Director, Division, Commission (March 13, 1992).

[57] Although their CP program previously had been eligible, at the time of their downgrading and thereafter, no CP issued by USF&G or Mutual Benefit Life Insurance was on deposit at DTC. Following its downgrading, the total of $50 million United Telecommunications CP on deposit at DTC was routinely presented on six separate maturity dates by means of DTC's book-entry maturity presentment ("MP") procedures, and payment was made.

Columbia Gas first defaulted on a maturity payment of $5 million due on the day following its downgrading. Prior to 3 p.m., DTC was informed by the paying agent of its refusal to pay, and the MP procedures were implemented and worked as they were designed to. A total of $267,920,000 overdue Columbia Gas CP remains on DTC's books. The company is operating under the protection of the Federal Bankruptcy Code. Letter from Richard B. Nesson, General Counsel and Senior Vice President, DTC, to Judith Poppalardo, Assistant Director, Division, Commission (March 13, 1992).

[58] Specifically, the Commission believed the amendments to Rule 2a–7 were "necessary to ensure that money market funds meet investors' expectations for safety, soundness and convenience by maximizing the likelihood that these funds will be able to maintain a stable net asset value under the pricing procedures they are permitted to use." Investment Company Act Release No. 18005 (February 21, 1991), 56 FR 8113.

[59] See Securities Exchange Act Release No. 27445 (November 16, 1989), 54 FR 48703.

[60] Letter from Richard B. Nesson, General Counsel and Senior Vice President, DTC to Judith Poppalardo, Assistant Director, Division, Commission (July 29, 1992). Of the 74 delays reported to the Commission, approximately one-third were caused by processing problems at a Federal Reserve Bank, a few were caused by processing problems at DTC, and the remainder were related to processing or communications problems at either the participant or settling bank level (*e.g.*, failure to assign the wire to DTC a higher priority than other wire traffic, misdirected wires, or natural disasters such as Hurricane Hugo). *Id.*

represented to the Commission that promptly upon learning that a PA failure to settle is due to insolvency, DTC will begin the issuer notification procedures that otherwise would not begin until 12:00 noon on the day after settlement date.[61] DTC also has agreed to accept alternative telephone and fax numbers by which to alert affected issuers upon such PA failure.

Nevertheless, the TMA continues to believe that permanent approval of the CP program should be withheld until criteria for terminating CP issuer liability can be established. The Commission notes that DTC's CP program is not designed to eliminate completely issuer risk resulting from a PA failure any more than the physical certificate system was so designed. Instead, DTC's CP program is designed to reduce risk substantially to all participants and CP issuers through the system's many safeguards and controls. DTC's CP program is collateralized fully, has a significant SDFS fund, and permits bilateral net debit caps between participants. In addition, the Federal Reserve Board and the Federal Reserve Bank of New York have reviewed DTC's procedures and found these procedures to be consistent with the Federal Reserve's payment system policies. Moreover, the Public Securities Association's ("PSA") CP Task Force was in close consultation with DTC throughout the development of the CP program. The PSA CP Task Force is comprised of representatives of CP dealers and PAs, as well as issuers of CP.

Accordingly, the Commission believes that the safeguards and controls DTC has established under the SDFS service and the CP program achieve a reasonable balance between the potential risk to DTC and CP program participants and the cost to the industry, including the cost of reduced liquidity to minimize such risk, and that the proposal is consistent with DTC's obligations under section 17A of the Act to assure the safeguarding of securities and funds which are in its custody or control.[62]

[61] *Id.*

[62] The Commission previously has urged DTC to consider prohibiting free pledges in both the SDFS service and DTC's Next-Day-Funds Settlement ("NDFS") service in circumstances where a participant's net debit exceeds its participants fund deposit and available, nonpledge assets. In connection with DTC's proposed conversion of its NDFS service to SDFS, DTC has requested comments from participants on the merits of precluding free pledges. DTC will continue to monitor the relative costs and benefits of such a policy as it continues towards the conversion to SDFS.

IV. Conclusion

For the reasons stated above, the Commission finds that DTC's proposal is consistent with Section 17A of the Act.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR–DTC–92–01) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 18991 Filed 8–10–92; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange, Incorporated

August 4, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

China Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–8858)
Emerging Germany Fund, Inc.
Common Stock, $.001 Par Value (File No. 7–8859)
GTECH Holdings Corp.
Common Stock, $.01 Par Value (File No. 7–8860)
John Nuveen Co.
Class A Common Stock, $.01 Par Value (File No. 7–8861)
Latin American Dollar Income Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–8862)
Royal Appliance Manufacturing Co.
Common Stock, No Par Value (File No. 7–8863)
Ultramar Corp.
Common Stock, $.01 Par Value (File No. 7–8864)
Wellcome Plc
American Depositary Shares, Common Stock, No Par Value (File No. 7–8865)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 25, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protections of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92–18992 Filed 8–10–92; 8:45am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Incorporated

August 4, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Sunrise Energy Services, Inc.
Common Stock, $1.00 Par Value (File No. 7–8882)
Sunrise Medical, Inc.
Common Stock, $1.00 Par Value (File No. 7–8883)
Wellcome Plc
American Depositary Shares (representing the right to receive one Ordinary Share of 25p each) (File No. 7–8884)
Fleet Mortgage Group, Inc.
Common Stock, $.01 Par Value (File No. 7–8885)
Smith Barney Municipal Fund, Inc.
Common Stock, $.001 Par Value (File No. 7–8886)
RHI Entertainment, Inc.
Common Stock, $.01 Par Value (File No. 7–8887)
Horn & Hardart Company
Common Stock Subscription Rights (File No. 7–8888)
International Thoroughbred Breeders, Inc.
Common Stock, Subscription Rights (File No. 7–8889)

These securities are listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 25, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the

Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extension of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-18993 Filed 8-10-92; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Incorporated

August 4, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Royal Appliance Manufacturing Co.
Common Stock, No Par Value (File No. 7-8866)
Wellcome Plc
Ordinary Shares (in the form of American Depository Shares or Ordinary Shares) (File No. 7-8867)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 25, 1992, written data, views and arguments concerning the above-reference application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-18994 Filed 8-10-92; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Incorporated

August 4, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Freeport McMoran Copper & Gold, Inc.
Dep. Shares Cv. Exch. Special Preference $0.10 Par Value (File No. 7-8868)
Wellcome Plc
American Depositary Shares (File No. 7-8869)
BankAmerica Corporation
Dep. Shares, Cum. Pfd Stock (File No. 7-8870)
First Republic Bancorp, Inc.
Common Stock, $.01 Par Value (File No. 7-8871)
Merrill Lynch & Co. Inc.
S&P 500 Market Index Target Term Securities Due 1997—Units (File No. 7-8872)
Sunrise Medical, Inc.
Common Stock, $1.00 Par Value (File No. 7-8873)
Patriot Global Dividend Fund
Shares of Beneficial Interest, No Par Value (File No. 7-8874)
Teleconcepts Corporation
Common Stock, $.10 Par Value (File No. 7-8875)
Automated Security Holding Plc
American Depositary Shares (File No. 7-8876)
Managed Municipal Portfolio, Inc.
Common Stock, $.001 Par Value (File No. 7-8877)
Banco Commercial Portuguese S.A.
American Depositary Shares (File No. 7-8878)
Enron Liquids Pipelines L.P.
Common Units Representing Limited Partner Interests (File No. 7-8879)
RHI Entertainment, Inc.
Common Stock, $.001 Par Value (File No. 7-8880)
Fleet Mortgage Group, Inc.
Common Stock, $.01 Par Value (File No. 7-8881)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 25, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street NW, Washington DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-18995 Filed 8-10-92; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATE: Comments should be submitted by September 10, 1992. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Cleo Verbillis, Small Business Administration, 409 3RD Street, SW., 5th Floor, Washington, DC 20416, Telephone: (202) 205-6629.

OMB Reviewer: Gary Waxman Office of Information and Regulatory Affairs Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: Sources of Innovation Survey.
SBA Form No.: SBA Temporary Form 1845.
Frequency: One-time.
Description of Respondents: Small and Large Businesses.
Annual Responses: 480.
Annual Burden: 385.
Title: Disaster Business Loan Application.
SBA Form Nos.: SBA Forms 5, 739A, 1368, 1632.
Frequency: On occasion.
Description of Respondents: Small Businesses.
Annual Responses: 10,500.
Annual Burden: 43,995.

Dated: August 3, 1992.

Cleo Verbillis,

Acting Chief, Administrative Information Branch.

[FR Doc. 92-19068 Filed 8-10-92; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Areas #2574 & #2575]

Alabama (and a Contiguous County in Mississippi); Declaration of Disaster Loan Area

Colbert County and the contiguous counties of Franklin, Lauderdale, and Lawrence in the State of Alabama, and Tishomingo County in the State of Mississippi constitute a disaster area as a result of damages caused by flooding which occurred on June 12, 1992. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on September 24, 1992 and for economic injury until the close of business on April 26, 1993 at the address listed below:

U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, suite 300, Atlanta, GA 30308

or other locally announced locations.

The interest rates are:

For Physical Damage:	*Percent*
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	6.500
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	8.500
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The numbers assigned to this disaster for physical damage are 257406 for Alabama and 257506 for Mississippi. For economic injury the numbers are 767300 for Alabama and 767400 for Mississippi.

(Catalog of Federal Domestic Assistance Program Nos. 57002 and 59008).

Dated: July 24, 1992.

Patricia Saiki,

Administrator.

[FR Doc. 92-19074 Filed 8-10-92; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2572]

Kansas; Declaration of Disaster Loan Area

Cloud County and the contiguous counties of Clay, Jewell, Mitchell, Ottawa, Republic, and Washington in the State of Kansas constitute a disaster area as a result of damages caused by high straight line winds and severe rain storms which occurred on July 8 1992. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on September 21, 1992 and for economic injury until the close of business on April 22, 1993 at the address listed below:

U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Ft. Worth, TX 76155

or other locally announced locations.

The interest rates are:

For Physical Damage:	*Percent*
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	6.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	8.500
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 257211 and for economic injury the number is 767100.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: July 22, 1992.

[FR Doc. 92-19069 Filed 8-10-92; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2564]

Minnesota; Amendment #2; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with an amendment dated July 7, 1992, to the President's major disaster declaration of June 26, to include McLeod County, Minnesota, as a disaster area as a result of damages caused by severe storms, flooding, and tornadoes which occurred June 16 through 20, 1992.

All other information remains the same, i.e., the termination date for filing applications for physical damage is August 26, 1992, and for economic injury until the close of business on March 26, 1993.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: July 17, 1992.

Alfred E. Judd,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 92-19072 Filed 8-10-92; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2573]

Ohio; Declaration of Disaster Loan Area

Franklin and Logan Counties and the contiguous counties of Auglaize, Champaign, Delaware, Fairfield, Hardin, Licking, Madison, Pickaway, Shelby, and Union in the State of Ohio constitute a disaster area as a result of damages caused by severe thunderstorms and flooding beginning on July 12 and continuing through July 17, 1992. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on September 24, 1992 and for economic injury until the close of business on April 26, 1993 at the address listed below:

U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, suite 300, Atlanta, GA 30308

or other locally announced locations.

The interest rates are:

For Physical Damage:	*Percent*
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	6.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	8.500

For Economic Injury:
Businesses and small agricultural cooperatives without credit available elsewhere..... 4.000

The number assigned to this disaster for physical damage is 257306 and for economic injury the number is 767200.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: July 24, 1992.

Patricia Saiki,

Administrator.

[FR Doc. 92-19075 Filed 8-10-92; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2569]

Texas; Amendment #1; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with an amendment dated July 9, 1992, to the President's major disaster declaration of July 2, to include Moore County, Texas, as a disaster area as a result of damages caused by severe thunderstorms and tornadoes which occurred on June 27, 1992.

In addition, small businesses located in the contiguous counties of Dallam, Hartley, and Oldham in the State of Texas may file applications until the specified date at the aforementioned location.

All other information remains the same, i.e., the termination date for filing applications for physical damage is September 1, 1992, and for economic injury until the close of business on April 2, 1993.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: July 17, 1992.

Alfred E. Judd,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 92-19071 Filed 8-10-92; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2561]

Virginia; Amendment #2; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with an amendment dated June 25, 1992, to the President's major disaster declaration of May 19, to include Bath County in the State of Virginia as a disaster area as a result of damages caused by severe storms and flooding on April 21-22, 1992.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Greenbrier and Pocahontas in the State of West Virginia may be filed until the specified date at the previously designated location.

Because the Notice of Amendments was issued less than 30 days before the deadline for filing applications for physical damage, applications from victims located in the above-named counties will be accepted until July 27, 1992. For all others, the deadline for filing applications for physical damage remains July 17, 1992. For economic injury the deadline is February 19, 1993.

The economic injury number for West Virginia is 763000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: July 2, 1992.

Alfred E. Judd,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 92-19070 Filed 8-10-92; 8:45 am]

BILLING CODE 8025-01-M

[License No. 05/05-0218]

Cambridge Ventures, L.P., Issuance of a Small Business Investment Company License

On October 21, 1991, a notice was published in the **Federal Register** (56 FR 52567) stating that an application had been filed by Cambridge Ventures, L.P. with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1991)) for a license as a small business investment company.

Interested parties were given until close of business November 20, 1991, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 05/05-0218 on July 6, 1992, to Cambridge Ventures, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: July 28, 1992.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 92-19073 Filed 8-10-92; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice 1670]

Secretary of State's Advisory Committee on Private International Law; Study Group on Judgments; Meeting

The first meeting of the recently established Study Group on Judgments of the Secretary of State's Advisory Committee on Private International Law will take place at 10:15 a.m. on Wednesday, September 2, 1992 in the main building of the Department of State in Washington, DC. Members of the general public may attend up to the capacity of the meeting room and participate in the discussions subject to the instructions of the Chair.

The Study Group will discuss the recent proposal by the United States that the Hague Conference on Private International Law seek between 1993 and 1996 to prepare a convention (multilateral treaty) on the recognition and enforcement of court judgments. The Study Group will also be asked for guidance with regard to the draft of a paper further explaining the U.S. proposal being prepared for submission to the Hague Conference in connection with a meeting of experts from several Member States of that organization in late October to examine the U.S. proposal in detail and to discuss the changes that the Hague Conference will be able to prepare a useful and potentially successful convention. A final decision on the U.S. proposal will be reached at the Hague Conference's 17th session in May 1993.

The meeting will be held on September 2, 1992 in A.I.D. conference room 5951 at the main State Department building. Entry to the building should be via the entrance at 21st Street and Virginia Avenue, N.W. (and not at the Diplomatic Entrance). As access to the Department is controlled, members of the general public planning to attend should notify Ms. Rosalia Gonzales by telephone at (202) 653-9853 or by mail at the office indicated below not later than close of business August 27 of their name, affiliation, social security number date of birth, address and telephone number. Persons interested may request to be provided with information documents in advance of the meeting. Persons interested but unable to attend the meeting may submit comments or proposals by telefax to (202) 632-5283 or by writing to the Office of the Assistant Legal Adviser for Private International

Law (L/PIL), 2100 K Street, NW.—suite 501, Washington, DC 20037–7180.

Peter H. Pfund,

Assistant Legal Adviser for Private International Law and Vice-Chair, Secretary of State's Advisory Committee on Private International Law.

[FR Doc. 92–19056 Filed 8–10–92; 8:45 am]

BILLING CODE 4710–08–M

[Public Notice 1671]

Secretary of State's Advisory Committee on Private International Law; Study Group on International Electronic Commerce

A Study Group on International Electronic Commerce of the Secretary of State's Advisory Committee on Private International Law has been formed and will hold a meeting on Friday, August 28, 1992 at the Department of State in Washington, DC. The Study Group will provide technical advice and recommendations on developments in new electronic and computer-assisted commercial technology and methods; whether such developments would be facilitated internationally by modifications to existing or formulation of new commercial laws, rules or regulations; and the degree of U.S. interest in seeking harmonization or unification of laws in this field at the international level. The Study Group will review activities of various international organizations underway in this field in order to develop its recommendations.

The Study Group will have before it a Report of the United Nations Commission on International Trade Law (UNCITRAL) Working Group on Electronic Commerce which met in January 1992. At its annual Plenary Session in May, 1992, UNCITRAL authorized the Working Group to proceed in this field and report in what areas, if any, preparation of international rules would be of assistance and whether they should be in the form of a treaty, uniform law or otherwise. The next meeting of the UNCITRAL Working Group is scheduled for January, 1993. The Study Group will develop recommendations for U.S. positions for that meeting.

Subjects to be considered include whether basic legal principles as applied to electronic data interchange (EDI) need to be reconsidered and possibly restated in international rules form. This may include the formation and execution of contracts utilizing EDI, authorization, offer and acceptance, transfer of rights, evidence and applicable legal standards for rights and liabilities of commercial parties in electronic and computer-assisted transactions. The legal implications of standardized messaging, of central data managers, rights in data and other issues may also be considered.

In addition, the Study Group will review related activities of other organizations such as the U.N. Economic Commission for Europe (ECE) Working Party on Trade Facilitation (WP IV), the U.N. Conference on Trade and Development (UNCTAD), the International Chamber of Commerce (ICC), and others. These activities include legal aspects of standardization of computer messaging, preparation of draft trading partner and interchange agreements, a revision of the Uniform Rules for Interchange of Trade Data by tele-transmission (UNCID), development of EDI customs clearance systems and other matters.

For copies of United Nations documents relevant to the meeting or information on the Department of State's program on private international law, please contact Harold S. Burman, Office of the Legal Adviser (L/PIL) at the address below.

The meeting will be held from 9:30 a.m. until 4:30 in room 4825 in the Bureau of Consular Affairs, U.S. Department of State. The public may participate in the meeting up to the capacity of the conference room and subject to the instructions of the Chair. As access to the Department is controlled, members of the public wishing to attend should notify Ms. Rosalia Gonzales of the office indicated below not later than close of business August 24th of their name, affiliation, social security number, date of birth, address and telephone number. Persons interested but unable to attend the meeting may submit comments or proposals to Harold S. Burman by telefax to L/PIL at (202) 632–5283 or by writing to the Office of the Assistant Legal Adviser for Private International Law (L/PIL), 2100 "K" Street, NW.—suite 501, Washington, DC 20037–7180.

Peter H. Pfund,

Vice-Chair, Secretary of State's Advisory Committee on Private International Law.

[FR Doc. 92–19057 Filed 8–10–92; 8:45 am]

BILLING CODE 4710–08–M

[Public Notice 1668]

Shipping Coordinating Committee; International Maritime Organization (IMO) Legal Committee; Meeting

The U.S. Shipping Coordinating Committee (SHC) will conduct an open public meeting at 10 a.m., on Wednesday, September 2, 1992, in room 2415 of U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, D.C.

The primary purpose of this meeting is to prepare for the 67th Session of the International Maritime Organization (IMO) Legal Committee, which will be held in London, England, September 28–October 2, 1992, and to begin preparations for the Diplomatic Conference on a Draft Convention on Maritime Liens and Mortgages which is scheduled to be held in Geneva, Switzerland, April 19, 1993 through May 7, 1993.

Two principal subjects are on the agenda for the SHC public meeting. First, to discuss the Legal Committee deliberations concerning the question of liability and compensation related to the maritime carriage of hazardous and noxious substances (HNS), which will be taken up at the 67th Session. Second, to review and discuss the Draft Convention on Maritime Liens and Mortgages that was developed by a joint group of legal experts working from 1986 through 1989 under the auspices of the IMO and the United Nations Conference on Trade and Development (UNCTAD). A work program for the SHC will be established in order to prepare for the upcoming Diplomatic Conference.

The views of the public, and particularly those of affected maritime commercial and environmental interests, are requested.

Members of the public are invited to attend the SHC meeting, up to the seating capacity of the room.

For further information or to submit views concerning any of the topics to be addressed at the SHC meeting, contact either Captain David J. Kantor or Lieutenant Commander Mark J. Yost, U.S. Coast Guard (G–LMI), 2100 Second Street, SW., Washington, DC 20593, telephone (202) 267–1527, telefax 267–4163.

Dated: July 31, 1992.

Geoffrey Ogden,

Chairman, Shipping Coordinating Committee.

[FR Doc. 92–19040 Filed 8–10–92; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. 92–G]

Section 16 Circular Revision

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of availability.

SUMMARY: The Federal Transit Administration (FTA) is revising Circular 9070.1B: Section 16(b)(2) Capital Assistance Program Guidance. Before the circular is finalized, we seek comments from interested parties on the draft changes. This notice announces the availability of the circular for review.

DATES: Written comments will be accepted by FTA until September 2, 1992.

ADDRESSES: All requests for the draft circular should be addressed to Sue Masselink, Office of Grants Management, Federal Transit Administration, 400 Seventh Street, SW., room 9301, Washington, DC 20590. Comments on the circular should be submitted to the FTA Docket Clerk, same address but room 9316.

FOR FURTHER INFORMATION CONTACT: Sue Masselink, Section 16 Program Manager, Office of Grants Management, Federal Transit Administration, (202) 366–2053.

SUPPLEMENTARY INFORMATION: Section 16 of the Federal Transit Act, as amended, provides for a program of formula capital assistance to meet the special transportation needs of elderly persons and persons with disabilities. Funds are apportioned annually to the States, which then apply to FTA for approval of a program of projects. Eligible recipients include private non-profit organizations, and under certain circumstances, public bodies.

Program guidance for the Section 16 program currently is contained in FTA Circular 9070.1B, dated July 1, 1988, "Section 16(b)(2) Capital Assistance Program Guidance." FTA is revising the circular to incorporate new provisions included in the Intermodal Surface Transportation Efficiency Act of 1991 (Pub. L. 102–240, October 28, 1991), particularly the provisions making public bodies eligible subrecipients.

FTA values the experience of the States which administer the Section 16 program and of the many providers of Section 16 service at the local level. The ISTEA introduces a new group of potential recipients of assistance. FTA is making the draft circular available for comment by those affected by the changes in the program guidance. All comments received will be reviewed by FTA Section 16 program staff and taken into consideration in refining the guidance included in the final revised circular. We hope to issue to new circular, FTA C 9070.1C, before the end of the current fiscal year (September 30, 1992).

Parties interested in reviewing the draft may request a copy by writing to the Office of Grants Management, at the address listed in the **"ADDRESSES"** section of this document. The draft circular will be sent as soon as it is available. (Anyone who previously requested the Section 18 draft circular, in response to the Notice of availability published in the **Federal Register** on June 26, 1992, will be sent both draft circulars. No further request is required.) Comments should be sent to the FTA docket, also at the address listed in the **ADDRESSES** section of this document.

Issued On: August 5, 1992.

Roland J. Mvoss,

Deputy Administrotor.

[FR Doc. 92–19030 Filed 8–10–92; 8:45 am]

BILLING CODE 4910–57–M#

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Department Circular—Public Debt Series—No. 27–92]

Treasury Bonds of August 2022 (CUSIP No. 912810 EM 6)

Washington, August 5, 1992.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of chapter 31 of title 31, United States Code, invites tenders for United States securities, as described above and in the offering announcement, hereafter referred to as Bonds. The Bonds will be sold at auction, and bidding will be on a yield basis. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Bonds and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Bonds may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Bonds may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The issue date and maturity date of the Bonds are stated in the offering announcement. The Bonds will accrue interest from August 15, 1992. Payment for the bonds will be based on the price equivalent to the bid yield determined in accordance with this circular, plus accrued interest from August 15, 1992, to August 17, 1992. Interest will be payable on a semiannual basis as described in the offering announcement through the date that the principal becomes payable. The Bonds will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Bonds will be issued only in book-entry form in the minimum and multiple amounts stated in the offering announcement. They will not be issued in registered definitive or in bearer form.

2.3. A Bond may be held in its fully constituted form or it may be divided into its separate Principal and Interest Components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as fiscal agents of the United States. The provisions specifically applicable to the separation, maintenance, transfer, and reconstitution of Principal and Interest Components are set forth in Section 6 of this circular. Subsections 2.1. and 2.2. of this section are descriptive of Bonds in their fully constituted form; the description of the separate Principal and Interest components is set forth in section 6 of this circular.

2.4. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR part 306), as to the extent applicable to marketplace securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the Treasury Direct Book-Entry Securities System in Department of the Treasury Circular, Public Debt Series, No. 2–86 (31 CFR part 357), apply to the Bonds offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239–1500. The closing times for the receipt of noncompetitive and competitive tenders are specified in the offering announcement. Noncompetitive tenders will be considered timely if postmarked (U.S. Postal Service cancellation date) no later than the day prior to the auction and received no later than close of business on the issue day.

3.2. The par amount of Bonds bid for must be stated on each tender. The minimum bid is stated in the offering announcement, and larger bids must be in multiples of that amount.

3.3. Competitive bids must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g.,

7.10%. Fractions may not be used. A single bidder, as defined in Treasury's single bidder guidelines contained in Attachment A to this circular, may submit bids at more than one yield. However, at any one yield, the Treasury will not recognize any amount tendered by a single bidder in excess of 35 percent of the public offering amount. A competitive bid by a single bidder at any one yield in excess of 35 percent of the public offering will be reduced to that amount.

3.4. Noncompetitive tenders do not specify a yield. A single bidder should not submit a noncompetitive tender for more than $5,000,000. A noncompetitive bid by a single bidder in excess of $5,000,000 will be reduced to that amount. A bidder, whether bidding directly or through a depository institution or a government securities broker/dealer, may not submit a noncompetitive bid for its own account in the same auction in which it is submitting a competitive bid for its own account. A bidder may not submit a noncompetitive bid if the bidder holds a position, in the Bonds being auctioned, in "when-issued" trading, or in futures or forward contracts. A noncompetitive bidder may not enter into any agreement to purchase or sell or otherwise dispose of the security being auctioned, nor may it commit to sell the security prior to the designated closing time for receipt of competitive bids.

3.5. The following institutions may submit tenders for accounts of customers: depository institutions, as described in section 19(b)(1)(A), excluding those institutions described in subparagraph (vii), of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)); and government securities broker/dealers that are registered with the Securities and Exchange Commission or noticed as government securities broker/dealers pursuant to section 15C(a)(1) of the Securities Exchange Act of 1934. Others are permitted to submit tenders only for their own account. A submitter, if bidding competitively for customers, must include a customer list with the tender giving, for each customer, the name of the customer and the amount bid. A separate tender and customer list should be submitted for each competitive yield. For non-competitive bids, the customer list must provide, for each customer, the name of the customer and the amount bid. For mailed tenders, the customer list must be submitted with the tender. For other than mailed tenders, the customer list should accompany the tender. If the customer list is not submitted with the tender, information for the list must be complete and available for review by the deadline for submission of noncompetitive tenders. The customer list should be received by the Federal Reserve Bank on auction day. All competitive and noncompetitive bibs submitted on behalf of trust estates must provide, for each trust estate, the name or title of the trustee(s), a reference to the document creating the trust with the date of execution, and the employer identification number of the trust. Customer bids may not be aggregated on the customer list. The customer list must include customers and customers of those customers, where applicable.

3.6. A competitive single bidder must report its net long position if the total of all its bids for the security being offered and its net position in the security equals or exceeds $2 billion, with the position to be determined as of one half-hour prior to the closing time for the receipt of competitive tenders. A net long position includes positions, in the security being auctioned, in "when-issued" trading, and in futures and forward contracts. Bidders who meet this reporting requirement and are customers of a depository institution or a government securities broker/dealer must report their positions through the institution submitting the bid on their behalf.

3.7. Tenders from bidders who are making payment by charge to a funds account at a Federal Reserve Bank and tenders from bidders who have an approved autocharge agreement on file at a Federal Reserve Bank will be received without deposit. In addition, tenders from States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks will be received without deposit. Tenders from all others, including tenders submitted for Bonds to be maintained on the book-entry records of the Department of the Treasury, must be accompanied by full payment for the amount of Bonds applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.8. After the deadline for receipt of competitive tenders, there will be a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in section 4, noncompetitive bids will be accepted in full, and then competitive bids will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Bids at the highest accepted yield will be prorated if necessary. After the determination is made as to which bids are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.00 and a lowest accepted price above the original issue discount limit. The stated rate of interest will be paid on all of the Bonds. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive bids will pay the price equivalent to the weighted average yield of accepted competitive bids. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive bids received would absorb all or most of the offering, competitive bids will be accepted in an amount sufficient to provide a fair determination of the yield. Bids received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive bids.

3.9. No single bidder will be awarded securities in an amount exceeding 35 percent of the public offering. The determination of the maximum award to a single bidder will take into account the bidder's net long position, if the bidder has been obliged to report its position per the requirements outlined in section 3.6.

3.10. Notice of awards will be provided by a Federal Reserve Bank or Branch or the Bureau of the Public Debt to bidders who have submitted accepted competitive bids, whether for their own account or for the account of customers. Those submitting non-competitive bids will be notified only if the bid is not accepted in full, or when the price at the average yield is over par. No later than 12 noon local time on the day following the auction, the appropriate Federal Reserve Bank will notify each depository institution that has entered into an autocharge agreement with a bidder as to the amount to be charged to the institution's funds account at the Federal Reserve Bank on the issue date. Any customer that is awarded $500 million or more of securities must furnish, no later than 10 a.m. local time on the day following the auction, written confirmation of its bid to the Federal Reserve Bank or Branch where the bid was submitted. A depository institution or government securities broker/dealer

submitting a bid for a customer is responsible for notifying its customer of this requirement if the customer is awarded $500 million or more of securities as a result of bids submitted by the depository institution or government securities broker/dealer.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all bids in whole or in part, to allot more or less than the amount of Bonds specified in the offering announcement, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this section is final.

5. Payment and Delivery

5.1. Settlement for the Bonds allotted must be made timely at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement must include accrued interest from August 15, 1992, to August 17, 1992. The amount of accrued interest per $1,000 will be determined in the auction. Settlement on Bonds allotted will be made by a charge to a funds account or pursuant to an approved autocharge agreement, as provided in section 3.7. Settlement on Bonds allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.7 must be made or completed on or before the issue date. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury notes or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors by the time stated in the offering announcement. When payment has been submitted with the tender and the purchase price of the Bonds allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Bonds allotted may, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Bonds allotted and to be held in Treasury Direct are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the Bond being purchased. In any such case, the tender form used to place the Bonds allotted in Treasury Direct must be completed to show all the information required thereon, or the Treasury Direct account number previously obtained.

6. Separability of Principal and Interest

6.1. Under the Treasury's Strips Program (Separate Trading of Registered Interest and Principal of Securities), a Bond may be divided into its separate components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as Fiscal Agents of the United States. The separate Strips components are: each future semiannual interest payment (referred to as an Interest Component) and the principal payment (referred to as the Principal Component). Each Interest Component and the Principal Component shall have an identifying designation and CUSIP number, which are set forth in Attachment B to this circular.

6.2. Attachment B also provides the payable dates for the separate components. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

6.3. For a Bond to be separated into the components described in section 6.1., the par amount of the Bond must be in an amount which, based on the stated interest rate of the Bond, will produce a semiannual interest payment of $1,000 or a multiple of $1,000. Attachment C to this circular provides the minimum par amounts required to separate a security at various interest rates, as well as the interest payments corresponding to those minimum par amounts. Par amounts greater than the minimum amount must be in multiples of that amount. The minimum par amount for this offering will be provided in the public announcement of the amount and yield range of accepted bids.

6.4. A Bond may be separated into its components at any time from the issue date until maturity. A request for separation must be made to the Federal Reserve Bank maintaining the account for the Bonds. Once a Bond has been separated into its components, the components may be maintained and transferred in multiples of $1,000.

6.5. Interest and Principal Components of separated securities may be reconstituted, i.e., restored to their fully constituted form, on the book-entry records of the Federal Reserve Banks. A Principal Component and all related unmatured Interest Components, in the appropriate minimum or multiple amounts previously announced, must be submitted together for reconstitution.

6.6. Detached physical interest coupons, coupons held under the Cubes Program, or cash payments may not be substituted for missing Interest or Principal Components. Any reconstitution request which does not comprise all of the necessary Strips components in the appropriate amounts will not be accepted.

6.7. The book-entry transfer of each Interest Component and Principal Component included in a reconstitution transaction will be subject to the fee schedule generally applicable to transfers of book-entry Treasury securities.

6.8. Unless otherwise provided in this offering circular, the Department of the Treasury's general regulations governing United States securities apply to the Bonds separated into their components.

7. General Provisions

7.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Bonds.

7.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Bonds. Public announcement of such changes will be promptly provided.

7.3. The Bonds issued under this circular shall be obligations of the United States, whether held in the fully constituted form or as separate Interest and Principal Components, and, therefore, the faith of the United States Government is pledged to pay, in legal transfer, principal and interest on the Bonds.

7.4. Attachments A, B, and C, and the offering announcement are incorporated as part of this circular.

Gerald Murphy,

Fiscal Assistant Secretary.

Attachment A—Treasury's Single Bidder Guidelines for Noncompetitive Bidding in all Treasury Security Auctions

The investor categories listed below define what constitutes a single noncompetitive bidder.

(1) *Bank Holding Companies and Subsidiaries*—

A bank holding company (includes the company and/or one or more of its subsidiaries, whether or not organized as separate entities under applicable law).

(2) *Banks and Branches*—

A parent bank (includes the parent and/or one or more of its branches, whether or not organized as separate entities under applicable law).

(3) *Thrift Institutions and Branches*—

A thrift institution, such as a savings and loan association, credit union, savings banks, or other similar entity (includes the principal or parent office and/or one or more of its branches, whether or not organized as separate entities under applicable law).

(4) *Corporations and Subsidiaries*—

A corporation (includes the corporation and/or one or more of its majority-owned subsidiaries, i.e., any subsidiary more than 50 percent of whose stock is owned by the parent corporation or by any other of its majority-owned subsidiaries).

(5) *Families*—

A married person (includes his or her spouse, and any unmarried adult children, having a common address and/or household).

Note: A minor child, as defined by the law of domicile, is not permitted to submit tenders individually, or jointly with an adult bidder. (A minor's parent acting as natural guardian is not recognized as a separate bidder.)

(6) *Partnerships*—

Each partnership (includes a partnership or individual partner(s), acting together or separately, who own the majority or controlling interest in other partnerships, corporations, or associations).

(7) *Guardians, Custodians, or other Fiduciaries*—

A guardian, custodian, or similar fiduciary, identified by (a) the name or title of the fiduciary, (b) reference to the document, court order, or other authority under which the fiduciary is acting, and (c) the taxpayer identifying number assigned to the estate.

(8) *Trusts*—

A trust estate, which is identified by (a) the name or title of the trustee, (b) a reference to the document creating the trust, e.g., a trust indenture, with date of execution, or a will, (c) the IRS employer identification number (not social security account number).

(9) *Political Subdivisions*—

(a) A state government (any of the 50 states and the District of Columbia).

(b) A unit of local government (any county, city, municipality, or township, or other unit of general government, as defined by the Bureau of the Census for statistical purposes, and includes any trust, investment, or other funds thereof).

(c) A commonwealth, territory, or possession.

(10) *Mutual Funds*—

A mutual fund (includes all funds that comprise it, whether or not separately administered).

(11) *Money Market Funds*—

A money market fund (includes all funds that have a common management).

(12) *Investment Agents/Money Managers*—

An individual, firm, or association that undertakes to service, invest, and/or manage funds for others.

(13) *Pension Funds*—

A pension fund (includes all funds that comprise it, whether or not separately administered).

Notes: The definitions do not reflect all bidder situations. "Single bidder" is not necessarily synonymous with "single entity".

Questions concerning the guidelines should be directed to the Office of Financing, Bureau of the Public Debt, Washington, DC 20239 (telephone 202/219-3350).

Attachment B—CUSIP Numbers and Designations for the Principal Component and Interest Components of Treasury Bonds of August 15, 2022, CUSIP No. 912810 EM 6

The Principal Component is designated (Interest Rate) Treasury Principal (TPRN) 2022 due August 15, 2022, CUSIP No. 912803 AZ 6.

INTEREST COMPONENTS

Designation	CUSIP No. 912833
Treasury Interest (TINT) due:	
February 15, 1993	BM 1
August 15, 1993	BN 9
February 15, 1994	BP 4
August 15, 1994	BQ 2
February 15, 1995	BR 0
August 15, 1995	BS 8
February 15, 1996	BT 6
August 15, 1996	BU 3
February 15, 1997	BV 1

INTEREST COMPONENTS—Continued

Designation	CUSIP No. 912833
August 15, 1997	BW 9
February 15, 1998	BX 7
August 15, 1998	BY 5
February 15, 1999	BZ 2
August 15, 1999	CA 6
February 15, 2000	CB 4
August 15, 2000	CC 2
February 15, 2001	CD 0
August 15, 2001	CE 8
February 15, 2002	CF 5
August 15, 2002	CG 3
February 15, 2003	CH 1
August 15, 2003	CJ 7
February 15, 2004	CK 4
August 15, 2004	CL 2
February 15, 2005	CM 0
August 15, 2005	CN 8
February 15, 2006	CP 3
August 15, 2006	CQ 1
February 15, 2007	CR 9
August 15, 2007	CS 7
February 15, 2008	CT 5
August 15, 2008	CU 2
February 15, 2009	CV 0
August 15, 2009	CW 8
February 15, 2010	CX 6
August 15, 2010	CY 4
February 15, 2011	CZ 1
August 15, 2011	DA 5
February 15, 2012	DB 3
August 15, 2012	DC 1
February 15, 2013	DD 9
August 15, 2013	DE 7
February 15, 2014	DF 4
August 15, 2014	DG 2
February 15, 2015	DH 0
August 15, 2015	JT 8
February 15, 2016	KG 4
August 15, 2016	KJ 8
February 15, 2017	KL 3
August 15, 2017	KN 9
February 15, 2018	KQ 2
August 15, 2018	KS 8
February 15, 2019	KU 3
August 15, 2019	KW 9
February 15, 2020	KY 5
August 15, 2020	LA 6
February 15, 2021	LC 2
August 15, 2021	LE 8
February 15, 2022	LG 3
August 15, 2022	LJ 7

Attachment C—Minimum Face Amounts Which are Multiples of $1000 Required in Order to Produce Interest Payments That Are Multiples of $1000

Coupon (%)	Minimum Face ($)	Interest Payment ($)
5.000	40,000.00	1,000.00
5.125	1,600,000.00	41,000.00
5.250	800,000.00	21,000.00
5.375	1,600,000.00	43,000.00
5.500	400,000.00	11,000.00
5.625	320,000.00	9,000.00
5.750	800,000.00	23,000.00
5.875	1,600,000.00	47,000.00
6.000	100,000.00	3,000.00
6.125	1,600,000.00	49,000.00
6.250	32,000.00	1,000.00
6.375	1,600,000.00	51,000.00
6.500	400,000.00	13,000.00
6.625	1,600,000.00	53,000.00

Coupon (%)	Minimum Face ($)	Interest Payment ($)
6.750	800,000.00	27,000.00
6.875	320,000.00	11,000.00
7.000	200,000.00	7,000.00
7.125	1,600,000.00	57,000.00
7.250	800,000.00	29,000.00
7.375	1,600,000.00	59,000.00
7.500	80,000.00	3,000.00
7.625	1,600,000.00	61,000.00
7.750	800,000.00	31,000.00
7.875	1,600,000.00	63,000.00
8.000	25,000.00	1,000.00
8.125	320,000.00	13,000.00
8.250	800,000.00	33,000.00
8.375	1,600,000.00	67,000.00
8.500	400,000.00	17,000.00
8.625	1,600,000.00	69,000.00
8.750	160,000.00	7,000.00
8.875	1,600,000.00	71,000.00
9.000	200,000.00	9,000.00
9.125	1,600,000.00	73,000.00
9.250	800,000.00	37,000.00
9.375	84,000.00	3,000.00
9.500	400,000.00	19,000.00
9.625	1,600,000.00	77,000.00
9.750	800,000.00	39,000.00
9.875	1,600,000.00	79,000.00
10.000	20,000.00	1,000.00
10.125	1,600,000.00	81,000.00
10.250	800,000.00	41,000.00
10.375	1,600,000.00	83,000.00
10.500	400,000.00	21,000.00
10.625	320,000.00	17,000.00
10.750	800,000.00	43,000.00
10.875	1,600,000.00	87,000.00
11.000	200,000.00	11,000.00
11.125	1,600,000.00	89,000.00
11.250	1,600,000.00	9,000.00
11.375	1,600,000.00	91,000.00
11.500	400,000.00	23,000.00
11.625	1,600,000.00	93,000.00
11.750	800,000.00	47,000.00
11.875	320,000.00	19,000.00
12.000	50,000.00	3,000.00
12.125	1,600,000.00	97,000.00
12.250	800,000.00	49,000.00
12.375	1,600,000.00	99,000.00
12.500	16,000.00	1,000.00
12.625	1,600,000.00	101,000.00
12.750	800,000.00	51,000.00
12.875	1,600,000.00	103,000.00
13.000	200,000.00	13,000.00
13.125	320,000.00	21,000.00
13.250	800,000.00	53,000.00
13.375	1,600,000.00	107,000.00
13.500	400,000.00	27,000.00
13.625	1,600,000.00	109,000.00
13.750	1,600,000.00	11,000.00
13.875	1,600,000.00	111,000.00
14.000	100,000.00	7,000.00
14.125	1,600,000.00	113,000.00
14.250	800,000.00	57,000.00
14.375	320,000.00	23,000.00
14.500	400,000.00	29,000.00
14.625	1,600,000.00	117,000.00
14.750	800,000.00	59,000.00
14.875	1,600,000.00	119,000.00
15.000	40,000.00	3,000.00
15.125	1,600,000.00	121,000.00
15.250	800,000.00	61,000.00
15.375	1,600,000.00	123,000.00
15.500	400,000.00	31,000.00
15.625	64,000.00	5,000.00
15.750	800,000.00	63,000.00
15.875	1,600,000.00	127,000.00
16.000	25,000.00	2,000.00
16.125	1,600,000.00	129,000.00
16.250	160,000.00	13,000.00
16.375	1,600,000.00	131,000.00
16.500	400,000.00	33,000.00
16.625	1,600,000.00	133,000.00
16.750	800,000.00	67,000.00
16.875	320,000.00	27,000.00
17.000	200,000.00	17,000.00
17.125	1,600,000.00	137,000.00
17.250	800,000.00	69,000.00
17.357	1,600,000.00	139,000.00
17.500	80,000.00	7,000.00
17.625	1,600,000.00	141,000.00
17.750	800,000.00	71,000.00
17.875	1,600,000.00	143,000.00
18.000	100,000.00	9,000.00
18.125	320,000.00	29,000.00
18.250	800,000.00	73,000.00
18.375	1,600,000.00	147,000.00
18.500	400,000.00	37,000.00
18.625	1,600,000.00	149,000.00
18.750	32,000.00	3,000.00
18.875	1,600,000.00	151,000.00
19.000	200,000.00	19,000.00
19.125	1,600,000.00	153,000.00
19.250	800,000.00	77,000.00
19.375	320,000.00	31,000.00
19.500	400,000.00	39,000.00
19.625	1,600,000.00	157,000.00
19.750	800,000.00	79,000.00
19.875	1,600,000.00	159,000.00
20.000	10,000.00	1,000.00
20.125	1,600,000.00	16,000.00
20.250	800,000.00	81,000.00

Treasury August Quarterly Financing

The Treasury will raise about $15,225 million of new cash and refund $20,784 million of securities maturing August 15, 1992, by issuing $15,000 million of 3-year notes, $11,000 million of 10-year notes, and $10,000 million of 30-year bonds. The $20,784 million of maturing securities are those held by the public, including $1,908 million held, as of today, by Federal Reserve Banks as agents for foreign and international monetary authorities.

The three issues totaling $36,000 million are being offered to the public, and any amounts tendered by Federal Reserve Banks as agents for foreign and international monetary authorities will be added to that amount. Tenders for such accounts will be accepted at the average prices of accepted competitive tenders.

In addition to the public holdings, Government accounts and Federal Reserve Banks, for their own accounts, hold $4,033 million of the maturing securities that may be refunded by issuing additional amounts of the new securities at the average prices of accepted competitive tenders.

The 10-year note and 30-year bond being offered today will be eligible for the STRIPS program.

Details about each of the new securities are given in the attached highlights of the offering and in the official offering circulars.

Attachment

HIGHLIGHTS OF TREASURY OFFERINGS TO THE PUBLIC, AUGUST 1992 QUARTERLY FINANCING

[August 5, 1992]

Amount Offered to the Public	$15,000 million	$11,000 million	$10,000 million.
Description of Security:			
Term and type of security	3-year notes	10-year notes	30-year bonds.
Series and CUSIP designation	Series Q-1995 (CUSIP No. 912827 G48).	Series B-2002 (CUSIP No. 912827 G55).	Bonds of August 2022 (CUSIP No. 912810 EM 6).
CUSIP Nos. for STRIPS Components.	Not applicable	Listed in Attachment B of offering circular.	Listed in Attachment B of offering circular.
Issue date	August 17, 1992	August 17, 1992 (to be dated August 15, 1992).	August 17, 1992 (to be dated August 15, 1992).
Maturity date	August 15, 1995	August 15, 2002	August 15, 2022.
Interest rate	To be determined based on the average of accepted bids.	To be determined based on the average of accepted bids.	To be determined based on the average of accepted bids.
Investment yield	To be determined at auction	To be determined at auction	To be determined at auction.
Premium or discount	To be determined after auction	To be determined after auction	To be determined after auction.
Interest payment dates	February 15 and August 15	February 15 and August 15	February 15 and August 15.
Minimum denomination available	$5,000	$1,000	$1,000.
Amount required for STRIPS	Not applicable	To be determined after auction	To be determined after auction.
Terms of Sale:			
Method of sale	Yield auction	Yield auction	Yield auction.
Competitive tenders	Must be expressed as an annual yield with two decimals, e.g., 7.10%.	Must be expressed as an annual yield with two decimals, e.g., 7.10%.	Must be expressed as an annual yield with two decimals, e.g., 7.10%.

HIGHLIGHTS OF TREASURY OFFERINGS TO THE PUBLIC, AUGUST 1992 QUARTERLY FINANCING—Continued

[August 5, 1992]

Noncompetitive tenders	Accepted in full at the average price up to $5,000,000.	Accepted in full at the average price up to $5,000,000.	Accepted in full at the average price up to $5,000,000.
Accrued interest payable by investor.	None	To be determined after auction	To be determined after auction.
Key Dates:			
Receipt of tenders	Tuesday, August 11, 1992	Wednesday, August 12, 1992	Thursday, August 13, 1992.
(a) noncompetitive	Prior to 12:00 noon, EDST	Prior to 12:00 noon, EDST	Prior o 12:00 noon, EDST.
(b) competitive	Prior to 1:00 p.m., EDST	Prior to 1:00 p.m., EDST	Prior to 1:00 p.m., EDST.
Settlement (final payment due from institutions):			
(a) funds immediately available to the Treasury.	Monday, August 17, 1992	Monday, August 17, 1992	Monday, August 17, 1992.
(b) readily-collectible check	Thursday, August 13, 1992	Thursday, August 13, 1992	Thursday, August 13, 1992.

[FR Doc. 92-18970 Filed 8-6-92; 8:45 am]
BILLING CODE 4810-40-M

[Department Circular—Public Debt Series—No. 26-92; (CUSIP No. 912827 G5 5)]

Treasury Notes of August 15, 2002, Series B-2002

Washington, August 5, 1992.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of chapter 31 of title 31, United States Code, invites tenders for United States securities, as described above and in the offering announcement, hereafter referred to as Notes. The Notes will be sold at auction, and bidding will be on a yield basis. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The issue date and maturity date of the Notes are stated in the offering announcement. The Notes will accrue interest from August 15, 1992. Payment for the Notes will be based on the price equivalent to the bid yield determined in accordance with this circular, plus accrued interest from August 15, 1992, to August 17, 1992. Interest will be payable on a semiannual basis as described in the offering announcement through the date that the principal becomes payable. The Notes will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes will be issued only in book-entry form in the minimum and multiple amounts stated in the offering announcement. They will not be issued in registered definitive or in bearer form.

2.3. A Note may be held in its fully constituted form or it may be divided into its separate Principal and Interest Components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as fiscal agents of the United States. The provisions specifically applicable to the separation, maintenance, transfer, and reconstitution of Principal and Interest Components are set forth in Section 6 of this circular. Subsections 2.1. and 2.2. of this section are descriptive of Notes in their fully constituted form; the description of the separate Principal and Interest components is set forth in section 6 of this circular.

2.4. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the Treasury Direct Book-Entry Securities System in Department of the Treasury Circular, Public Debt Series, No. 2-86 (31 CFR part 357), apply to the Notes offered in this circular.

3. Sales Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of Public Debt, Washington, DC 20239-1500. The closing times for the receipt of noncompetitive and competitive tenders are specified in the offering announcement. Noncompetitive tenders will be considered timely if postmarked (U.S. Postal Service cancellation date) no later than the day prior to the auction and received no later than close of business on the issue day.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is stated in the offering announcement, and larger bids must be in multiples of that amount.

3.3. Competitive bids must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. A single bidder, as defined in Treasury's single bidder guidelines contained in Attachment A to this circular, may submit bids at more than one yield. However, at any one yield, the Treasury will not recognize any amount tendered by a single bidder in excess of 35 percent of the public offering amount. A competitive bid by a single bidder at any one yield in excess of 35 percent of the public offering will be reduced to that amount.

3.4. Noncompetitive tenders do not specify a yield. A single bidder should not submit a noncompetitive tender for more than $5,000,000. A noncompetitive bid by a single bidder in excess of $5,000,000 will be reduced to that amount. A bidder, whether bidding directly or through a depository institution or a government securities broker/dealer, may not submit a noncompetitive bid for its own account in the same auction in which it is submitting a competitive bid for its own account. A bidder may not submit a noncompetitive bid if the bidder holds a position, in the Notes being auctioned, in "when-issued" trading, or in futures or forward contracts. A noncompetitive bidder may not enter into any agreement to purchase or sell or otherwise dispose of the security being auctioned, nor may it commit to sell the security prior to the designated closing time for receipt of competitive bids.

3.5. The following institutions may submit tenders for accounts of customers: depository institutions, as

described in section 19(b)(1)(A), excluding those institutions described in subparagraph (vii), of the Federal Reserve Act (12 U.S.C. 461(B)(1)(A)); and government securities broker/dealers that are registered with the Securities and Exchange Commission or noticed as government securities broker/dealers pursuant to section 15C(a)(1) of the Securities Exchange Act of 1934. Others are permitted to submit tenders only for their own account. A submitter, if bidding competitively for customers, must include a customer list with the tender giving, for each customer, the name of the customer and the amount bid. A separate tender and customer list should be submitted for each competitive yield. For noncompetitive bids, the customer list must provide, for each customer, the name of the customer and the amount bid. For mailed tenders, the customer list must be submitted with the tender. For other than mailed tenders, the customer list should accompany the tender. If the customer list is not submitted with the tender, information for the list must be complete and available for review by the deadline for submission of noncompetitive tenders. The customer list should be received by the Federal Reserve Bank on auction day. All competitive and noncompetitive bids submitted on behalf of trust estates must provide, for each trust estate, the name or title of the trustee(s), a reference to the document creating the trust with the date of execution, and the employer identification number of the trust. Customer bids may not be aggregated on the customer list. The customer list must include customers and customers of those customers, where applicable.

3.6. A competitive single bidder must report its net long position if the total of all its bids for the security being offered and its net position in the security equals or exceeds $2 billion, with the position to be determined as of one half-hour prior to the closing time for the receipt of competitive tenders. A net long position includes positions, in the security being auctioned, in "when-issued" trading, and in futures and forward contracts. Bidders who meet this reporting requirement and are customers of a depository institution or a government securities broker/dealer must report their positions through the institution submitting the bid on their behalf.

3.7. Tenders from bidders who are making payment by charge to a funds account at a Federal Reserve Bank and tenders from bidders who have an approved autocharge agreement on file at a Federal Reserve Bank will be received without deposit. In addition, tenders from States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks will be received without deposit. Tenders from all others, including tenders submitted for Notes to be maintained on the book-entry records of the Department of the Treasury, must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.8. After the deadline for receipt of competitive tenders, there will be a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive bids will be accepted in full, and then competitive bids will be accepted starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Bids at the highest accepted yield will be prorated if necessary. After the determination is made as to which bids are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive bids will pay the price equivalent to the weighted average yield of accepted competitive bids. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive bids received would absorb all or most of the offering, competitive bids will be accepted in an amount sufficient to provide a fair determination of the yield. Bids received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive bids.

3.9. No single bidder will be awarded securities in an amount exceeding 35 percent of the public offering. The determination of the maximum award to a single bidder will take into account the bidder's net long position, if the bidder has been obliged to report its position per the requirements outlined in section 3.6.

3.10. Notice of awards will be provided by a Federal Reserve Bank or Branch or the Bureau of the Public Debt to bidders who have submitted accepted competitive bids, whether for their own account or for the account of customers. Those submitting non-competitive bids will be notified only if the bid is not accepted in full, or when the price at the average yield is over par. No later than 12 noon local time on the day following the auction, the appropriate Federal Reserve Bank will notify each depository institution that has entered into an autocharge agreement with a bidder as to the amount to be charged to the institution's funds account at the Federal Reserve Bank on the issue date. Any customer that is awarded $500 million or more of securities must furnish, no later than 10 a.m. local time on the day following the auction, written confirmation of its bid to the Federal Reserve Bank or Branch where the bid was submitted. A depository institution or government securities broker/dealer submitting a bid for a customer is responsible for notifying its customer of this requirement if the customer is awarded $500 million or more of securities as a result of bids submitted by the depository institution or government securities broker/dealer.

4. Reservations

4.1 The Secretary of the Treasury expressly reserves the right to accept or reject any or all bids in whole or in part, to allot more or less than the amount of Notes specified in the offering announcement, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1 Settlement for the Notes allotted must be made timely at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement must include accrued interest from August 15, 1992, to August 17, 1992. The amount of accrued interest per $1,000 will be determined in the auction. Settlement on Notes allotted will be made by a charge to a funds account or pursuant to an approved autocharge agreement, as provided in section 3.7. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.7 must be made or completed on or before the issue date. Payment in full must

accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury notes or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors by the time stated in the offering announcement. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted may, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in Treasury Direct are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the Note being purchased. In any such case, the tender form used to place the Notes allotted in Treasury Direct must be completed to show all the information required thereon, or the Treasury Direct account number previously obtained.

6. Separability of Principal and Interest

6.1. Under the Treasury's STRIPS Program (Separate Trading of Registered Interest and Principal of Securities), a Note may be divided into its separate components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as Fiscal Agents of the United States. The separate STRIPS components are: each future semiannual interest payment (referred to as an Interest Component) and the principal payment (referred to as the Principal Component). Each Interest Component and the Principal Component shall have an identifying designation and CUSIP number, which are set forth in Attachment B to this circular.

6.2. Attachment B also provides the payable dates for the separate components. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

6.3. For a Note to be separated into the components described in section 6.1., the par amount of the Note must be in an amount which, based on the stated interest rate of the Note, will produce a semiannual interest payment of $1,000 or a multiple of $1,000. Attachment C to this circular provides the minimum par amounts required to separate a security at various interest rates, as well as the interest payments corresponding to those minimum par amounts. Par amounts greater than the minimum amount must be in multiples of that amount. The minimum par amount for this offering will be provided in the public announcement of the amount and yield range of accepted bids.

6.4. A Note may be separated into its components at any time from the issue date until maturity. A request for separation must be made to the Federal Reserve Bank maintaining the account for the Notes. Once a Note has been separated into its components, the components may be maintained and transferred in multiples of $1,000.

6.5. Interest and Principal Components of separated securities may be reconstituted, i.e., restored to their fully constituted form, on the book-entry records of the Federal Reserve Banks. A Principal Component and all related unmatured Interest Components, in the appropriate minimum or multiple amounts previously announced, must be submitted together for reconstitution.

6.6. Detached physical interest coupons, coupons held under the CUBES Program, or cash payments may not be substituted for missing Interest or Principal Components. Any reconstitution request which does not comprise all of the necessary STRIPS components in the appropriate amounts will not be accepted.

6.7. The book-entry transfer of each Interest Component and Principal Component included in a reconstitution transaction will be subject to the fee schedule generally applicable to transfers of book-entry Treasury securities.

6.8. Unless otherwise provided in this offering circular, the Department of the Treasury's general regulations governing United States securities apply to the Notes separated into their components.

7. General Provisions

7.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

7.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

7.3. The Notes issued under this circular shall be obligations of the United States, whether held in the fully constituted form or as separate Interest and Principal Components, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

7.4. Attachments A, B, and C, and the offering announcement are incorporated as part of this circular.

Gerald Murphy,

Fiscal Assistant Secretary.

Attachment A—Treasury's Single Bidder Guidelines for Noncompetitive Bidding in All Treasury Security Auctions

The investor categories listed below define what constitutes a single noncompetitive bidder.

(1) *Bank Holding Companies and Subsidiaries—*

A bank holding company (includes the company and/or one or more of its subsidiaries, whether or not organized as separate entities under applicable law).

(2) *Banks and Branches—*

A parent bank (includes the parent and/or one or more of its branches, whether or not organized as separate entities under applicable law).

(3) *Thrift Institutions and Branches—*

A thrift institution, such as a savings and loan association, credit union, savings banks, or other similar entity (includes the principal or parent office and/or one or more of its branches, whether or not organized as separate entities under applicable law).

(4) *Corporations and Subsidiaries—*

A corporation (includes the corporation and/or one or more of its majority-owned subsidiaries, i.e., any subsidiary more than 50 percent of whose stock is owned by the parent corporation or by any other of its majority-owned subsidiaries).

(5) *Families—*

A married person (includes his or her spouse, and any unmarried adult children, having a common address and/or household).

Note: A minor child, as defined by the law of domicile, is not permitted to submit tenders individually, or jointly with an adult bidder. (A minor's parent acting as natural guardian is not recognized as a separate bidder.)

(6) *Partnerships*—

Each partnership (includes a partnership or individual partner(s), acting together or separately, who own the majority or controlling interest in other partnerships, corporations, or associations).

(7) *Guardians, Custodians, or other Fiduciaries*—

A guardian, custodian, or similar fiduciary, identified by (a) the name or title of the fiduciary, (b) reference to the document, court order, or other authority under which the fiduciary is acting, and (c) the taxpayer identifying number assigned to the estate.

(8) *Trusts*—

A trust estate, which is identified by (a) the name or title of the trustee, (b) a reference to the document creating the trust, e.g., a trust indenture, with date of execution, or a will, (c) the IRS employer identification number (not social security account number).

(9) *Politica Subdivisions*—

(a) A state government (any of the 50 states and the District of Columbia).

(b) A unit of local government (any county, city, municipality, or township, or other unit of general government, as defined by the Bureau of the Census for statistical purposes, and includes any trust, investment, or other funds thereof).

(c) A commonwealth, territory, or possession.

(10) *Mutual Funds*—

A mutual fund (includes all funds that comprise it, whether or not separately administered).

(11) *Money Market Funds*—

A money market fund (includes all funds that have a common management).

(12) *Investment Agents/Money Managers*—

An individual, firm, or association that undertakes to service, invest, and/or manage funds for others.

(13) *Pension Funds*—

A pension fund (includes all funds that comprise it, whether or not separately administered).

Notes: The definitions do not reflect all bidder situations. "Single bidder" is not necessarily synonymous with "single entity".

Questions concerning the guidelines should be directed to the Office of Financing, Bureau of the Public Debt, Washington, DC 20239 (telephone 202/219–3350).

Attachment B—CUSIP Numbers and Designations for the Principal Component and Interest Components of Treasury Notes of August 15, 2002, Series B–2002, CUSIP No. 912827 G5 5

The Principal Component is designated (Interest Rate) Treasury Principal (TPRN) Series B–2002 due August 15, 2002, CUSIP No. 912820 BE 6.

INTEREST COMPONENTS

Designation	CUSIP No. 912833
Treasury Interest (TINT) due—	
February 15, 1993	BM1
August 15, 1993	BN9
February 15, 1994	BP4
August 15, 1994	BQ2
February 15, 1995	BR0
August 15, 1995	BS8
February 15, 1996	BT6
August 15, 1996	BU3
February 15, 1997	BV1
August 15, 1997	BW9
February 15, 1998	BX7
August 15, 1998	BY5
February 15, 1999	BZ2
August 15, 1999	CA6
February 15, 2000	CB4
August 15, 2000	CC2
February 15, 2001	CD0
August 15, 2001	CE8
February 15, 2002	CF5
August 15, 2002	CG3

Attachment C—Minimum Face Amounts Which Are Multiples of $1,000 Required in Order To Produce Interest Payments That Are Multiples of $1,000

Coupon (%)	Minimum face ($)	Interest payment ($)
5.000	40,000.00	1,000.00
5.125	1,600,000.00	41,000.00
5.250	800,000.00	21,000.00
5.375	1,600,000.00	43,000.00
5.500	400,000.00	11,000.00
5.625	320,000.00	9,000.00
5.750	800,000.00	23,000.00
5.875	1,600,000.00	47,000.00
6.000	100,000.00	3,000.00
6.125	1,600,000.00	49,000.00
6.250	32,000.00	1,000.00
6.375	1,600,000.00	51,000.00
6.500	400,000.00	13,000.00
6.625	1,600,000.00	53,000.00
6.750	800,000.00	27,000.00
6.875	320,000.00	11,000.00
7.000	200,000.00	7,000.00
7.125	1,600,000.00	57,000.00
7.250	800,000.00	29,000.00
7.375	1,600,000.00	59,000.00
7.500	80,000.00	3,000.00
7.625	1,600,000.00	61,000.00
7.750	800,000.00	31,000.00
7.875	1,600,000.00	63,000.00
8.000	25,000.00	1,000.00
8.125	320,000.00	13,000.00
8.250	800,000.00	33,000.00
8.375	1,600,000.00	67,000.00
8.500	400,000.00	17,000.00
8.625	1,600,000.00	69,000.00
8.750	160,000.00	7,000.00
8.875	1,600,000.00	71,000.00
9.000	200,000.00	9,000.00
9.125	1,600,000.00	73,000.00
9.250	800,000.00	37,000.00
9.375	64,000.00	3,000.00
9.500	400,000.00	19,000.00
9.625	1,600,000.00	77,000.00
9.750	800,000.00	39,000.00
9.875	1,600,000.00	79,000.00
10.000	20,000.00	1,000.00
10.125	1,600,000.00	81,000.00
10.250	800,000.00	41,000.00
10.375	1,600,000.00	83,000.00
10.500	400,000.00	21,000.00
10.625	320,000.00	17,000.00
10.750	800,000.00	43,000.00
10.875	1,600,000.00	87,000.00
11.000	200,000.00	11,000.00
11.125	1,600,000.00	89,000.00
11.250	160,000.00	9,000.00
11.375	1,600,000.00	91,000.00
11.500	400,000.00	23,000.00
11.625	1,600,000.00	93,000.00
11.750	800,000.00	47,000.00
11.875	320,000.00	19,000.00
12.000	50,000.00	3,000.00
12.125	1,600,000.00	97,000.00
12.250	800,000.00	49,000.00
12.375	1,600,000.00	99,000.00
12.500	16,000.00	1,000.00
12.625	1,600,000.00	101,000.00
12.750	800,000.00	51,000.00
12.875	1,600,000.00	103,000.00
13.000	200,000.00	13,000.00
13.125	320,000.00	21,000.00
13.250	800,000.00	53,000.00
13.375	1,600,000.00	107,000.00
13.500	400,000.00	27,000.00
13.625	1,600,000.00	109,000.00
13.750	160,000.00	11,000.00
13.875	1,600,000.00	111,000.00
14.000	100,000.00	7,000.00
14.125	1,600,000.00	113,000.00
14.250	800,000.00	57,000.00
14.375	320,000.00	23,000.00
14.500	400,000.00	29,000.00
14.625	1,600,000.00	117,000.00
14.750	800,000.00	59,000.00
14.875	1,600,000.00	119,000.00
15.000	40,000.00	3,000.00
15.125	1,600,000.00	121,000.00
15.250	800,000.00	61,000.00
15.375	1,600,000.00	123,000.00
15.500	400,000.00	31,000.00
15.625	64,000.00	5,000.00
15.750	800,000.00	63,000.00
15.875	1,600,000.00	127,000.00
16.000	25,000.00	2,000.00
16.125	1,600,000.00	129,000.00
16.250	160,000.00	13,000.00
16.375	1,600,000.00	131,000.00
16.500	400,000.00	33,000.00
16.625	1,600,000.00	133,000.00
16.750	800,000.00	67,000.00
16.875	320,000.00	27,000.00
17.000	200,000.00	17,000.00
17.125	1,600,000.00	137,000.00
17.250	800,000.00	69,000.00
17.375	1,600,000.00	139,000.00
17.500	80,000.00	7,000.00
17.625	1,600,000.00	141,000.00
17.750	800,000.00	71,000.00
17.875	1,600,000.00	143,000.00
18.000	100,000.00	9,000.00
18.125	320,000.00	29,000.00
18.250	800,000.00	73,000.00

Coupon (%)	Minimum face ($)	Interest payment ($)
18.375	1,600,000.00	147,000.00
18.500	400,000.00	37,000.00
18.625	1,600,000.00	149,000.00
18.750	32,000.00	3,000.00
18.875	1,600,000.00	151,000.00
19.000	200,000.00	19,000.00
19.125	1,600,000.00	153,000.00
19.250	800,000.00	77,000.00
19.375	320,000.00	31,000.00
19.500	400,000.00	39,000.00
19.625	1,600,000.00	157,000.00
19.750	800,000.00	79,000.00
19.875	1,600,000.00	159,000.00
20.000	10,000.00	1,000.00
20.125	1,600,000.00	161,000.00
20.250	800,000.00	81,000.00

Treasury August Quarterly Financing

The Treasury will raise about $15,225 million of new cash and refund $20,784 million of securities maturing August 15, 1992, by issuing $15,000 million of 3-year notes, $11,000 million of 10-year notes, and $10,000 million of 30-year bonds. The $20,784 million of maturing securities are those held by the public, including $1,908 million held, as of today, by Federal Reserve Banks as agents for foreign and international monetary authorities.

The three issues totaling $36,000 million are being offered to the public, and any amounts tendered by Federal Reserve Banks as agents for foreign and international monetary authorities will be added to that amount. Tenders for such accounts will be accepted at the average prices of accepted competitive tenders.

In addition to the public holdings, Government accounts and Federal Reserve Banks, for their own accounts, hold $4,033 million of the maturing securities that may be refunded by issuing additional amounts of the new securities at the average prices of accepted competitive tenders.

The 10-year note and 30-year bond being offered today will be eligible for the STRIPS program.

Details about each of the new securities are given in the attached highlights of the offering and in the official offering circulars.

Attachment

HIGHLIGHTS OF TREASURY OFFERINGS TO THE PUBLIC, AUGUST 1992 Quarterly Financing

[August 5, 1992]

Amount Offered to the Public:	$15,000 million	$11,000 million	$10,000 million.
Description of Security:			
Term and type of security	3-year notes	10-year notes	30-year bonds.
Series and CUSIP designation	Series Q-1995 (CUSIP No. 912827 G4 8).	Series B-2002 (CUSIP No. 912827 G5 5).	Bonds of August 2022 (CUSIP No. 912810 EM 6).
CUSIP Nos. for STRIPS Components.	Not applicable	Listed in Attachment B of offering circular.	Listed in Attachment B of offering circular.
Issue date	August 17, 1992	August 17, 1992 (to be dated August 15, 1992).	August 17, 1992 (to be dated August 15, 1992).
Maturity date	August 15, 1995	August 15, 2002	August 15, 2022.
Interest rate	To be determined based on the average of accepted bids.	To be determined based on the average of accepted bids.	To be determined based on the average of accepted bids.
Investment yield	To be determined at auction	To be determined at auction	To be determined at auction.
Premium or discount	To be determined after auction	To be determined after auction	To be determined after auction.
Interest payment dates	February 15 and August 15	February 15 and August 15	February 15 and August 15.
Minimum denomination available	$5,000	$1,000	$1,000.
Amount required for STRIPS	Not applicable	To be determined after auction	To be determined after auction.
Terms of Sale:			
Method of sale	Yield auction	Yield auction	Yield auction.
Competitive tenders	Must be expressed as an annual yield with two decimals, e.g., 7.10%.	Must be expressed as annual yield with two decimals, e.g., 7.10%.	Must be expressed as an annual yield with two decimals, e.g., 7.10%.
Noncompetitive tenders	Accepted in full at the average price up to $5,000,000.	Accepted in full at the average price up to $5,000,000.	Accepted in full at the average price up to $5,000,000.
Accrued interest payable by investor.	None	To be determined after auction	To be determined after auction.
Key Dates:			
Receipt of tenders	Tuesday, August 11, 1992	Wednesday, August 12, 1992	Thursday August 12, 1992
(a) noncompetitive	Prior to 12:00 noon, EDST	Prior to 12:00 noon, EDST	Prior to 12:00 noon, EDST.
(b) competitive	Prior to 1:00 p.m., EDST	Prior to 1:00 p.m., EDST	Prior to 1:00 p.m., EDST.
Settlement (final payment due from institutions):			
(a) funds immediately available to the Treasury.	Monday, August 17, 1992	Monday, August 17, 1992	Monday, August 17, 1992.
(b) readily-collectible check	Thursday, August 13, 1992	Thursday, August 13, 1992	Thursday, August 13, 1992.

[FR Doc. 92-18971 Filed 8-6-92; 8:45 am]
BILLING CODE 4810-40-M

[Department Circular—Public Debt Series—No. 25-92;

Treasury Notes of August 15, 1995, Series Q-1995 (Cusip No. 912827 G4 8)]

Washington, August 5, 1992.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of chapter 31 of title 31, United States Code, invites tenders for United States securities, as described above and in the offering announcement, hereafter referred to as Notes. The Notes will be sold at auction, and bidding will be on a yield basis. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The issue date and maturity date of the Notes are stated in the offering announcement. The Notes will accrue interest from the issue date. Interest will be payable on a semiannual basis as described in the offering announcement

through the date that the principal becomes payable. The Notes will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes will be issued only in book-entry form in the minimum and multiple amounts stated in the offering announcement. They will not be issued in registered definitive or in bearer form.

2.3. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the Treasury Direct Book-Entry Securities System in Department of the Treasury Circular, Public Debt Series, No. 2–86 (31 CFR part 357), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239–1500. The closing times for the receipt of noncompetitive and competitive tenders are specified in the offering announcement. Noncompetitive tenders will be considered timely if postmarked (U.S. Postal Service cancellation date) no later than the day prior to the auction and received no later than close of business on the issue day.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is stated in the offering announcement, and larger bids must be in multiples of that amount.

3.3. Competitive bids must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. A single bidder, as defined in Treasury's single bidder guidelines contained in Attachment A to this circular, may submit bids at more than one yield. However, at any one yield, the Treasury will not recognize any amount tendered by a single bidder in excess of 35 percent of the public offering amount. A competitive bid by a single bidder at any one yield in excess of 35 percent of the public offering will be reduced to that amount.

3.4. Noncompetitive tenders do not specify a yield. A single bidder should not submit a noncompetitive tender for more than $5,000,000. A noncompetitive bid by a single bidder in excess of $5,000,000 will be reduced to that amount. A bidder, whether bidding directly or through a depository institution or a government securities broker/dealer, may not submit a noncompetitive bid for its own account in the same auction in which it is submitting a competitive bid for its own account. A bidder may not submit a noncompetitive bid if the bidder holds a position, in the Notes being auctioned, in "when-issued" trading, or in futures or forward contracts. A noncompetitive bidder may not enter into any agreement to purchase or sell or otherwise dispose of the security being auctioned, nor may it commit to sell the security prior to the designated closing time for receipt of competitive bids.

3.5. The following institutions may submit tenders for accounts of customers: Depository institutions, as described in section 19(b)(1)(A), excluding those institutions described in subparagraph (vii), of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)); and government securities broker/dealers that are registered with the Securities and Exchange Commission or noticed as government securities broker/dealers pursuant to section 15C(a)(1) of the Securities Exchange Act of 1934. Others are permitted to submit tenders only for their own account. A submitter, if bidding competitively for customers, must include a customer list with the tender giving, for each customer, the name of the customer and the amount bid. A separate tender and customer list should be submitted for each competitive yield. For non-competitive bids, the customer list must provide, for each customer, the name of the customer and the amount bid. For mailed tenders, the customer list must be submitted with the tender. For other than mailed tenders, the customer list should accompany the tender. If the customer list is not submitted with the tender, information for the list must be complete and available for review by the deadline for submission of noncompetitive tenders. The customer list should be received by the Federal Reserve Bank on auction day. All competitive and noncompetitive bids submitted on behalf of trust estates must provide, for each trust estate, the name or title of the trustee(s), a reference to the document creating the trust with the date of execution, and the employer identification number of the trust. Customer bids may not be aggregated on the customer list. The customer list must include customers and customers of those customers, where applicable.

3.6. A competitive single bidder must report its net long position if the total of all its bids for the security being offered and its net position in the security equals or exceeds $2 billion, with the position to be determined as of one half-hour prior to the closing time for the receipt of competitive tenders. A net long position includes positions, in the security being auctioned, in "when-issued" trading, and in futures and forward contracts. Bidders who meet this reporting requirement and are customers of a depository institution or a government securities broker/dealer must report their positions through the institution submitting the bid on their behalf.

3.7. Tenders from bidders who are making payment by charge to a funds account at a Federal Reserve Bank and tenders from bidders who have an approved autocharge agreement on file at a Federal Reserve Bank will be received without deposit. In addition, tenders from States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks will be received without deposit. Tenders from all others, including tenders submitted for Notes to be maintained on the book-entry records of the Department of the Treasury, must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.8. After the deadline for receipt of competitive tenders, there will be a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in sections 4, noncompetitive bids will be accepted in full, and then competitive bids will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Bids at the highest accepted yield will be prorated if necessary. After the determination is made as to which bids are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive bids will pay the price equivalent to the

weighted average yield of accepted competitive bids. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive bids received would absorb all or most of the offering, competitive bids will be accepted in an amount sufficient to provide a fair determination of the yield. Bids received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted at the price equivalent to the weighted average yield of accepted competitive bids.

3.9. No single bidder will be awarded securities in an amount exceeding 35 percent of the public offering. The determination of the maximum award to a single bidder will take into account the bidder's net long position, if the bidder has been obliged to report its position per the requirements outlined in section 3.6.

3.10. Notice of awards will be provided by a Federal Reserve Bank or Branch or the Bureau of the Public Debt to bidders who have submitted accepted competitive bids, whether for their own account or for the account of customers. Those submitting noncompetitive bids will be notified only if the bid is not accepted in full, or when the price at the average yield is over par. No later than 12 noon local time on the day following the auction, the appropriate Federal Reserve Bank will notify each depository institution that has entered into an autocharge agreement with a bidder as to the amount to be charged to the institution's funds account at the Federal Reserve Bank on the issue day. Any customer that is awarded $500 million or more of securities must furnish, no later than 10 a.m. local time on the day following the auction, written confirmation of its bid to the Federal Reserve Bank or Branch where the bid was submitted. A depository institution or government securities broker/dealer submitting a bid for a customer is responsible for notifying its customer of this requirement if the customer is awarded $500 million or more of securities as a result of bids submitted by the depository institution or government securities broker/dealer.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all bids in whole or in part, to allot more or less than the amount of Notes specified in the offering announcement, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made timely at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted will be made by a charge to a funds account or pursuant to an approved autocharge agreement, as provided in section 3.7. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.7. must be made or completed on or before the issue date. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury notes or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors by the time stated in the offering announcement. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted may, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in Treasury Direct are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the Note being purchased. In any such case, the tender form used to place the Notes allotted in Treasury Direct must be completed to show all the information required thereon, or the Treasury Direct account number previously obtained.

6. General Provisions.

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

6.4. Attachment A and the offering announcement are incorporated as part of this circular.

Gerald Murphy,

Fiscal Assistant Secretary.

Attachment A—Treasury's Single Bidder Guidelines for Noncompetitive Bidding in all Treasury Security Auctions

The investor categories listed below define what constitutes a single noncompetitive bidder.

(1) *Bank Holding Companies and Subsidiaries—*

A bank holding company (includes the company and/or one or more of its subsidiaries, whether or not organized as separate entities under applicable law).

(2) *Banks and Branches—*

A parent bank (includes the parent and/or one or more of its branches, whether or not organized as separate entities under applicable law).

(3) *Thrift Institutions and Branches—*

A thrift institution, such as a savings and loan association, credit union, savings banks, or other similar entity (includes the principal or parent office and/or one or more of its branches, whether or not organized as separate entities under applicable law).

(4) *Corporations and Subsidiaries—*

A corporation (includes the corporation and/or one or more of its majority-owned subsidiaries, i.e., any subsidiary more than 50 percent of whose stock is owned by the parent corporation or by any other of its majority-owned subsidiaries).

(5) *Families—*

A married person (included his or her spouse, and any unmarried adult children, having a common addressed and/or household).

Note: A minor child, as defined by the law of domicile, is *not* permitted to submit

tenders individually, or jointly with an adult bidder. (A minor's parent acting as natural guardian is *not* recognized as a separate bidder.)

(6) *partnership*—

Each partnership (includes a partnership or individual partner(s), acting together or separately, who own the majority or controlling interest in other partnerships, corporations, or associations).

(7) *Guardians, Custodians, or other Fiduciaries*—

A guardian, custodian, or similar fiduciary, identified by (a) the name or title of the fiduciary, (b) reference to the document, court order, or other authority under which the fiduciary is acting, and (c) the taxpayer identifying number assigned to the estate.

(8) *Trusts*—

A trust estate, which is identified by (a) the name or title of the trustee, (b) a reference to the document creating the trust, e.g., a trust indenture, with date of execution, or a will, (c) the IRS employer identification number (not social security account number).

(9) *Political Subdivisions*—

(a) A state government (any of the 50 states and the District of Columbia).

(b) A unit of local government (any county, city, municipality, or township, or other unit of general government, as defined by the Bureau of the Census for statistical purposes, and includes any trust, investment, or other funds thereof).

(c) A commonwealth, territory, or possession.

(10) *Mutual Funds*—

A mutual fund (includes all funds that comprise it, whether or not separately administered).

(11) *Money Market Funds*—

A money market fund (including all funds that have a common management).

(12) *Investment Agents/Money Managers*—

An individual, firm, or association that undertakes to service, invest, and/or manage funds for others.

(13) *Pension Funds*—

A pension fund (includes all funds that comprise it, whether or not separately administered).

Note: The definitions do not reflect all bidder situations. "Single bidder" is not necessarily synonymous with "single entity".

Questions concerning the guidelines should be directed to the Office of Financing, Bureau of the Public Debt, Washington, DC 20239 (telephone 202/219–3350).

Treasury August Quarterly Financing

The Treasury will raise about $15,225 million of new cash and refund $20,784 million or securities maturing August 15, 1992, by issuing $15,000 million of 3-year notes, $11,000 million of 10-year notes, and $10,000 million of 30-year bonds. The $20,784 million of maturing securities are those held by the public, including $1,908 million held, as of today, by Federal Reserve Banks as agents for foreign and international monetary authorities.

The three issues totaling $36,000 million are being offered to the public, and any amount tendered by Federal Reserve Banks as agents for foreign and international monetary authorities will be added to that amount. Tenders for such accounts will be accepted at the average prices of accepted competitive tenders.

In addition to the public holdings, Government accounts and Federal Reserve Banks, for their own accounts, hold $4,033 million of the maturing securities that may be refunded by issuing additional amounts of the new securities at the average prices of accepted competitive tenders.

The 10-year note and 30-year bond being offered today will be eligible for the STRIPS program.

Details about each of the new securities are given in the attached highlights of the offering and in the official offering circulars.

Attachment.

HIGHLIGHTS OF TREASURY OFFERINGS TO THE PUBLIC, AUGUST 1992 Quarterly Financing

[August 5, 1992]

Amount Offered to the Public	$15,000 million	$11,000 million	$10,000 million.
Description of Security:			
Term and type of security	3-year notes	10-year notes	30-year bonds.
Series and CUSIP designation	Series Q–1995 (CUSIP No. 912827 G4 8).	Series B–2002 (CUSIP No. 912827 G5 5).	Bonds of August 2022 (CUSIP No. 912810 EM 6).
CUSIP Nos. for STRIPS Components.	Not applicable	Listed in Attachment B of offering circular.	Listed in Attachment B of offering circular.
Issue date	August 17, 1992	August 17, 1992 (to be dated August 15, 1992).	August 17, 1992 (to be dated August 15, 1992).
Maturity date	August 15, 1995	August 15, 2002	August 15, 2022.
Interest rate	To be determined based on the average of accepted bids.	To be determined based on the average of accepted bids.	To be determined based on the average of accepted bids.
Investment yield	To be determined at auction	To be determined at auction	To be determined at auction.
Premium or discount	To be determined after auction	To be determined after auction	To be determined after auction.
Interest payment dates	February 15 and August 15	February 15 and August 15	February 15 and August 15.
Minimum denomination available	$5,000	$1,000	$1,000.
Amount required for STRIPS	Not applicable	To be determined after auction	To be determined after auction.
Terms of Sale:			
Method of sale	Yield Auction	Yield Auction	Yield auction.
Competitive tenders	Must be expressed as an annual yield with two decimals, e.g., 7.10%.	Must be expressed as an annual yield with two decimals, e.g., 7.10%.	Must be expressed as an annual yield with two decimals, e.g., 7.10%.
Noncompetitive tenders	Accepted in full at the average price up to $5,000,000.	Accepted in full at the average price up to $5,000,000.	Accepted in full at the average price up to $5,000,000.
Accrued interest payable by investor.	None	To be determined after auction	To be determined after auction.
Key Dates:			
Receipt of tenders	Tuesday, August 11, 1992	Wednesday, August 12, 1992	Thrusday, August 13, 1992.
(a) noncompetitive	Prior to 12:00 noon, EDST	Prior to 12:00 noon, EDST	Prior to 12:00 noon, EDST.
(b) competitive	Prior to 1:00 p.m., EDST	Prior to 1:00 p.m., EDST	Prior to 1:00 p.m., EDST
Settlement (final payment due from institutions):			

HIGHLIGHTS OF TREASURY OFFERINGS TO THE PUBLIC, AUGUST 1992 Quarterly Financing—Continued

[August 5, 1992]

(a) funds immediately available to the Treasury.	Monday, August 17, 1992	Monday, August 17, 1992	Monday, August 17, 1992.
(b) readily-collectible check	Thursday, August 13, 1992	Thursday, August 13, 1992	Thursday, August 13, 1992.

[FR Doc. 92-18972 Filed 8-6-92; 8:45 am]
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[Number: 27-02]

Directive

Date: August 3, 1992.

Subject: Organization and Functions of the Fiscal Service.

1. *Purpose.* This directive describes the organization and functions of the Fiscal Service, which administers the Government's financing operations and fiscal affairs.

2. *Organization Structure.* In accordance with 31 U.S.C. 306, the Fiscal Service consists of the Office of the Fiscal Assistant Secretary; the Financial Management Service, which has as its head a Commissioner; and the Bureau of the Public Debt, which has as its head a Commissioner. The Fiscal Assistant Secretary is the head of the Fiscal Service and is appointed by the Secretary of the Treasury, in accordance with 31 U.S.C. 301(d).

3. *Office of the Fiscal Assistant Secretary.* The officials, organizations and functions of the Office of the Fiscal Assistant Secretary are as follows.

a. *The Fiscal Assistant Secretary reports to the Under Secretary for Finance and is responsible for the following functions.*

(1) Provides general supervision, policy oversight, management, and coordination of the Financial Management Service and the Bureau of the Public Debt.

(2) Oversees the development of policies, programs, and systems for the collection, disbursement, management and security of public monies in the United States and in foreign countries and the related governmentwide reporting and accounting for such funds.

(3) Oversees the development of policies, programs, and systems for financing and accounting for the public debt.

(4) Provides general supervision and policy oversight of the Department of the Treasury's role as lead agency in improving cash management, credit administration, and financial management systems on a governmentwide basis.

(5) Provides policy advice and general oversight regarding international cash management activities and improvements, including the agreements to purchase foreign currencies and the holding and disbursement of these funds.

(6) Ensures the timely consolidation and publication of information on the Federal Government's financial operations for use by policy makers and decisions makers in the Government and in the private sector financial markets.

(7) Directs the implementation of security enhancements to ensure the authentication and integrity of data affecting electronic funds transfers.

(8) Oversees the administration and investment of the major Federal Government accounts and trust funds, such as the Social Security Trust Funds, Civil Service Retirement and Disability Fund, and the Highway Trust Fund.

(9) Oversees the management of the Treasury's daily cash position and the investment of Treasury's excess operating cash balances.

(10) Provides estimates of the Treasury's future cash position for use by the Department in connection with its financing activities and other financial operations.

(11) Oversees the performance of fiscal agency functions by the Federal Reserve banks as fiscal agents of the Treasury.

(12) Approves new and revised governmentwide principles and standards and system designs for Treasury's fiscal accounting systems operated and maintained by the Financial Management Service and Bureau of the Public Debt, and coordinates efforts to review, improve and report such systems in accordance with Section 4 of the Federal Managers' Financial Integrity Act (FMFIA), Public Law 97-255 (31 U.S.C. 3512(d)(2)(B)).

(13) Approves, in accordance with applicable Treasury directives, regulations pertaining to the Government securities market and participates in the development of policy issues affecting the liquidity, integrity and efficiency of the market.

(14) Provides policy advice to the Department's Office of the Assistant Secretary (International Affairs) regarding terms and conditions of agreements for borrowing from foreign international monetary authorities.

(15) Directs the Treasury's participation in the Joint Financial Management Improvement Program for improvement of all aspects of financial management in the Federal Government.

(16) Represents the Secretary on various interdepartmental commissions, boards, and committees.

b. *The Deputy Fiscal Assistant Secretary* shares fully in carrying out the functions and responsibilities of the Fiscal Assistant Secretary and works closely with the Fiscal Assistant Secretary in managing program areas for which the latter is responsible.

c. *The Senior Advisor for Fiscal Management* undertakes projects at the specific direction of the Fiscal Assistant Secretary and is the principal staff level policy coordinator of fiscal management initiatives within and among Treasury bureaus and other Federal departments. The incumbent is responsible for the following functions.

(1) Modernizes and synthesizes bureau and Federal agency program initiatives and practices and combines diverse conceptions into a coherent whole.

(2) Develops overall policy after identifying alternatives.

(3) Coordinates governmentwide and with the private sector on fiscal management policy issues, changes and improvements.

d. *The Assistant Fiscal Assistant Secretary* serves as the principal advisor to the Fiscal Assistant Secretary and the Deputy Fiscal Assistant Secretary on matters relating to:

(1) Designation and performance of depositaries for public funds and the safety of the funds while they remain on account with commercial financial institutions;

(2) Governmentwide cash management and credit administration;

(3) The Federal Tax Deposit System and the Treasury Tax and Loan Program;

(4) Federal Reserve fiscal agency operations;

(5) Fiscal aspects of programs involving foreign countries, including foreign currency purchases;

(6) Legislative initiatives and congressional issues related to Treasury's fiscal or financial operations;

(7) Coordination of the Fiscal Assistant Secretary's efforts for the

review, improvement and reporting of the governmentwide accounting systems for the Financial Management Service and the Bureau of the Public Debt in accordance with Section 4 of the FMFIA, 31 U.S.C. 3512 (d)(2)(B); and

(8) Managing Office of the Fiscal Assistant Secretary administrative matters.

e. *The Director, Office of Cash and Debt Management* is the principal advisor to the Fiscal Assistant Secretary and the Deputy Fiscal Assistant Secretary on matters relating to:

(1) Treasury cash and debt position management;

(2) Cash flow forecasting and reconciliation to the administration budget;

(3) Treasury borrowing;

(4) Foreign and domestic market activities;

(5) Investment of Government accounts and trust funds;

(6) Direct borrowing from Treasury;

(7) Treasury Financing Group activities; and

(8) Cash management operations and systems.

4. *The Financial Management Service.* The organization and functions of the Financial Management Service are as follows.

a. *Organization.* The Financial Management service is comprised of the Washington headquarters and seven Regional Financial Centers. In the Washington headquarters, the Office of the Commissioner consists of the Commissioner, the Deputy Commissioner, the Office of Planning and policy Analysis, and the Office of Legislative and Public Affairs. The headquarters office also includes the Chief Counsel, who resides in the Office of the Commissioner. The Chief Counsel is an official of the Department's Legal Division and under the supervision of the General Counsel of the Treasury. The Commissioner and Deputy Commissioner direct the activities of the bureau through six Assistant Commissioners: Management/Chief Financial Officer, Regional Operations, Financial Information, Federal Finance, Agency Services, and Information Resources. Regional Financial Centers are located in Austin, Birmingham, Chicago, Kansas City, Philadelphia, San Francisco, and Washington, D.C.

b. *Functions.* The Financial Management Service acts as the Government's financial manager and central accountant and is responsible for improving the quality of government financial management through the following functions.

(1) Develops and implements programs to improve Government financial management, including cash management, credit management, and debt collection.

(2) Coordinates governmentwide efforts to review, improve, and report on financial management systems.

(3) Issues electronic funds transfer payments and Treasury checks, reconciles all payments, and settles claims for Treasury checks cashed under forged endorsements or lost, stolen or destroyed.

(4) Operates and maintains the systems for the deposit of Government receipts, and designates and oversees the performance of Government depositaries.

(5) Maintains the central system that accounts for the monetary assets and liabilities of the Treasury and tracks Government collection and payment operations.

(6) Invests Government accounts and trust funds where directed by statute.

(7) Provides financial management information to Government decision makers with value-added analysis for better decision making by providing financial information systems, financial analysis, and by preparing financial reports that show budget results and the Government's overall financial status, such as the Daily Treasury Statement, the Monthly Treasury Statement, the Quarterly Treasury Bulletin, the Annual Report of the U.S. Government, and the Consolidated Financial Statement.

(8) Performs the review, improvement and reporting for the governmentwide accounting systems it maintains in accordance with Section 4 of the FMFIA, 31 U.S.C. 3512(d)(2)(B).

(9) Performs a wide range of financial services for Government agencies including accounting cross-servicing, providing financial advice and guidance, consulting on financial management services, assisting with financial systems, and training of accounting and finance staffs.

(10) Provides direction, guidance, and instructions to Federal Reserve Banks as fiscal agents pertaining to the acceptance of Government receipts and disbursement of Government payments.

5. *The Bureau of the Public Debt.* The organization and functions of the Bureau of the Public Debt are as follows:

a. *Organization.* The Bureau of the Public Debt is comprised of the Washington headquarters and operations facilities in Washington and in Parkersburg, West Virginia. In the Washington headquarters, the Office of the Commissioner consists of the Commissioner, the Deputy Commissioner, the Government Securities Regulations Staff, and the Program Advisory Staff. The headquarters office also includes the Office of the Chief Counsel. The Chief Counsel is an official of the Department's Legal Division and under the supervision of the General Counsel of the Treasury. The Commissioner and Deputy Commissioner direct the bureau's activities through six Assistant Commissioners: Securities and Accounting Services: Public Debt Accounting; Administration; Automated Information Systems; Savings Bond Operations; and Financing.

b. *Functions.* The Bureau of the Public Debt borrows the money needed to operate the Federal Government and accounts for the resulting public debt, and is responsible for the following functions.

(1) Maintains accounting controls over public debt receipts and expenditures, securities and interest costs, and publishes the Monthly Statement of the Public Debt of the United States.

(2) Participates with the Assistant Secretary (Domestic Finance) in the development of policies and plans pursuant to the Government Securities Act of 1986 and, on a day-to-day basis, carries out duties pursuant to the Act.

(3) Issues regulations and instructions pertaining to public debt securities, such as commercial and direct access book-entry securities, definitive securities, savings-type securities, and other special purpose securities.

(4) Prepares Department of the Treasury announcements and offering circulars for public debt securities, including savings bonds.

(5) Directs the auction and final allotment of subscriptions for public debt securities and issues such securities.

(6) Provides policy direction and exercises general oversight responsibility for the commercial book-entry system for Treasury marketable securities, and ensures the availability of an efficient mechanism for the conduct of secondary market transactions.

(7) Maintains accounts, processes transactions, and authorizes payments for investors whose book-entry, registered and/or savings bond accounts are held directly with the Treasury.

(8) Conducts or directs the conduct of transactions in outstanding definitive securities.

(9) Adjudicates claims on account of lost, stolen, destroyed or mutilated securities.

(10) Redeems securities and matured interest coupons, and performs final audit and subsequent destruction.

(11) Provides policy direction and exercises general oversight

responsibility for the nationwide network of institutions authorized to issue and redeem savings bonds.

(12) Maintains accounting and transaction records for all United States savings bonds printed, issued and retired.

(13) Provides direction, guidance, and instruction to Federal Reserve Banks as fiscal agents pertaining to public debt securities.

(14) Performs the review, improvement, and reporting for the governmentwide accounting systems it maintains in accordance with Section 4 of the FMFIA, 31 U.S.C. 3215(d)(2)(B).

6. *Authority.* Treasury Order 101–05, "Reporting Relationships and Supervision of Officials, Offices and Bureaus, Delegation of Certain Authority, and Order of Succession in the Department of the Treasury."

7. *Cancellation.* Treasury Directive 27–02, "Organization and Functions of the Fiscal Service," dated April 18, 1990, is superseded.

8. *Office of Primary Interest.* Office of the Fiscal Assistant Secretary.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 92–19012 Filed 8–10–92; 8:45 am]

BILLING CODE 4810–25–M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 155
Tuesday, August 11, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, August 12, 1992.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED: Labeling Requirements for Art Materials.

The staff will brief the Commission on issues concerning labeling requirements for art materials presenting chronic hazards. The staff will discuss a draft **Federal Register** notice containing the final codification of ASTM D-4236, final chronic hazard guidelines, and final supplemental definition of "toxic."

For a Recorded Message Containing the Latest Agenda Information, Call (301) 504-0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 (301) 504-0800.

Dated: August 5, 1992.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 92-19168 Filed 8-7-92; 2:58 pm]

BILLING CODE 6355-01-M

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, August 13, 1992.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

1. Pride in Public Service Award

The Commission will present the Pride in Public service award to August's recipient.

2. Voluntary Standards/International Affairs Activities

The staff will brief the Commission on voluntary standards and international affairs activities carried out by staff.

For a Recorded Message Containing the Latest Agenda Information, Call (301) 504-0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 (301) 504-0800.

Dated: August 5, 1992.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 92-19169 Filed 8-7-92; 2:58 pm]

BILLING CODE 6355-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meeting during the week August 10, 1992.

A closed meeting will be held on Wednesday, August 12, 1992, at 2:30 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Roberts, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the Closed meeting scheduled for Wednesday, August 12, 1992, at 2:30 p.m., will be:

Institution of injunctive actions.

Institution of administrative proceedings of an enforcement nature.

Settlement of injunctive actions.

Settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Bruce Rosenblum at (202) 272-2300.

Dated: August 5, 1992.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-19167 Filed 8-7-92; 2:57 pm]

BILLING CODE 8010-01-M

Corrections

Federal Register
Vol. 57, No. 155
Tuesday, August 11, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

International Trade Administration

U.S. Geological Survey, et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

Correction

In notice document 92-16656 beginning on page 31353 in the issue of Wednesday, July 15, 1992, on page 31354, in the third full paragraph, in the ninth line, "μ1" should read "μl".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 910935-2137]

RIN 0693-AA76

Technical Interpretation No. 1, Invalid Arguments in Intrinsic Functions, for Federal Information Processing Standard (FIPS) 21-3, COBOL

Correction

In notice document 92-17920 beginning on page 33492 in the issue of Wednesday, July 29, 1992, make the following corrections:

1. On page 33493:

a. In the first column, in the fifth line, insert "data" after "incompatible".

b. In the same column, under *Discussion of the Issues*, in the fifth line, "(85)" should read "(3)".

c. In the 2d column, in the 11th line from the bottom, "date" should read "data".

BILLING CODE 1505-01-D

NUCLEAR REGULATORY COMMISSION

New Standard Technical Specifications (Proof and Review); Availability

Correction

In notice document 92-18118 appearing on page 33979 in the issue of Friday, July 31, 1992, in the 2d column, in the 3rd paragraph, in the 12th and 13th lines, the phone number should read "(301) 504-1778".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Intent To Rule on Application To Impose a Passenger Facility Charge (PFC) at Tallahassee Regional Airport, Tallahassee, FL

Correction

In notice document 92-18449 appearing on page 34333 in the issue of Tuesday, August 4, 1992, make the following correction in the second column, in the **SUPPLEMENTARY INFORMATION**, in the second paragraph, in the sixth line, "improve" should read "approve".

BILLING CODE 1505-01-D

federal register

Tuesday
August 11, 1992

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Parts 1, et al.

Aircraft Flight Simulator Use in Pilot Training, Testing, and Checking and at Training Centers; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1, 61, 91, 121, 125, 135, 141, 142

[Docket No. 26933; Notice No. 92-10; and Special Federal Aviation Regulation No. 58]

RIN 2120-AA83

Aircraft Flight Simulator Use in Pilot Training, Testing, and Checking and at Training Centers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes new regulations that would contain certification and operating rules for training centers that would provide additional use of aircraft flight simulators and flight training devices for pilot training, testing, and checking. This proposed rulemaking would increase the use of flight simulators and flight training devices by persons other than air carrier certificate holders and would reduce the number of exemptions for the use of flight simulators. The new rules also would add regulations enabling Category III Instrument Landing System (ILS) operations.

DATES: Comments must be received on or before December 9, 1992.

ADDRESSES: Comments on this proposal may be mailed, in triplicate, to: Federal Aviation Administration, Office of the Chief Counsel, ATTN: Rules Docket (AGC-10), Docket No. 26933, 800 Independence Avenue SW., Washington, DC. 20591. Comments delivered must be marked "Docket No. 26933." Comments may be examined at Room 915G weekdays between 8:30 a.m. and 5 p.m. (except on Federal holidays).

FOR FURTHER INFORMATION CONTACT: Warren Robbins or Ron Myres, Manager, Regulations Branch, (AFS-850), General Aviation and Commercial Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC. 20591, Telephone (202) 267-8150.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals contained in this NPRM are invited. The comments should identify the regulatory docket or notice number and should be submitted in triplicate to the address above. All comments received on or before the closing date will be considered by the Administrator before taking action on the proposed rules. The proposals contained in this NPRM may be changed in light of the comments received. All comments submitted will be available in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

The FAA will acknowledge receipt of a comment if the commenter submits with the comment a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 26933." When the comment is received, the postcard will be dated, time stamped, and returned to the commenter.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-430, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Requests must identify the notice number of this NPRM. Persons interested in being placed on the mailing list for future proposed rules should also request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

Flight simulation technology has shown enormous advancement during the past 30 years. The FAA has permitted greater use of aircraft flight simulators and flight training devices in training, testing, and checking airmen. The increased complexity and operating costs of the modern turbine-powered aircraft and the current operating environment have created an even greater need for the use of flight simulators and flight training devices. In many cases, flight simulators have proven to provide more in-depth training than can be accomplished in the aircraft. The use of flight simulators and flight training devices in lieu of aircraft has resulted in a reduction in air traffic congestion, noise and air pollution, and training costs. The increased use of flight simulators is also consistent with the national policy for fuel conservation. Flight simulators provide a safe flight training environment and may reduce the number of training accidents by allowing training for emergency situations that cannot be safely conducted in flight. The FAA has traditionally recognized the value of flight simulators and flight training devices and has awarded credit for the completion of certain required training, testing, and checking in such devices.

The first aircraft flight simulators approved by the FAA were relatively unsophisticated and were authorized for only a limited number of maneuvers and procedures. As flight simulator technology developed, the FAA expanded the use of flight simulators but still required students to perform a number of maneuvers in an aircraft. Among these were takeoffs, landings, taxiing, and some approaches.

In Amendment No. 121-55 (35 FR 84; January 3, 1970), the FAA revised parts 61 and 121 to authorize the use of flight simulators and flight training devices for airman training, testing, and checking. This use applied only to part 121 air carriers.

In Amendment No. 61-60 (38 FR 3156; February 1, 1973), the FAA authorized the § 61.58 proficiency check for the pilot of an aircraft requiring more than one pilot to be accomplished in its entirety either in an airplane or in a flight simulator or flight training device. In alternating 12-month periods, the proficiency check needed only to consist of maneuvers and procedures that could be performed in a flight simulator or flight training device as set forth in appendix F of part 121.

Subsequently, the FAA issued Amendments 61-62 and 121-108 (38 FR 35443; December 28, 1973), effective December 19, 1973. These amendments, in part, revised parts 61 and 121 by authorizing certain maneuvers and procedures of the pilot-in-command proficiency check to be performed in an approved visual flight simulator, if the pilot being checked accomplished two landings in an airplane of the same type.

The FAA issued Amendments 61-69 and 121-161 (45 FR 44176; June 30, 1980), effective July 30, 1980, that further expanded the use of advanced flight simulators for air carriers. Amendments 61-69 and 121-161 formed the basis of the Advanced Simulation Plan, which included Phase I, II, IIA, and III flight simulators (Part 121, Appendix H).

Currently, there are approximately 32 holders of exemptions for the use of flight simulators for part 61 training, and the FAA regularly receives new petitions for exemption to expand the use of flight simulator training. The first exemption was approved in November 1974; the first advanced simulation

exemption was issued in 1983. Since the first exemptions were issued, the training roles of several elements of the aviation community have expanded, most notably those of part 121 and part 135 certificate holders providing training for other certificate holders, and aircraft manufacturers providing training. This expansion led to an ever-increasing number of exemptions. The proposed rules are needed to reduce or eliminate the administrative burden of issuing numerous exemptions.

In June 1988, the FAA received from a joint industry/FAA task force [1] several recommendations on the expanded use of flight simulators in new and innovative training programs. The recommendations included: (1) Establishing a training center certificate for a separate training entity certificated to conduct training, testing, and checking under FAR parts 61, 63, 91, 121, 135, 141, etc.; (2) centralizing an approved process for course programs and check airmen at the national level, with local approvals only for speciality (local or unique) courses; and (3) expanding and standardizing the use of flight simulators and flight training devices, while at the same time providing relief from certain provisions of part 121, appendix H. The task force recommended single point oversight of a certificate by the FAA (instead of separate Flight Standards District Offices approving centers in their geographic areas), defining training center recordkeeping requirements, and providing relief from the medical certificate requirements for instructors and check airmen conducting training in only flight simulators and flight training devices. The task force submitted aircraft manufacturer recommendations as an addendum that included allowing a manufacturer's training center to provide the initial operating experience (IOE) for air carriers.

In April 1989, this task force examined the role of training centers in air carrier and general aviation contract training, particularly training using flight simulators and flight training devices. Comprised of aviation representatives from special interest groups, aircraft manufacturers, air carriers, university flight departments, and training centers such as SimuFlite, Flight Safety, and Northwest Aerospace Training Corporation, this task force examined flight simulator instructor and evaluator issues, including prerequisites; initial and recurrent training; requirements for current medical certificates; necessary in-flight experience; training center issues such as recordkeeping, facilities, and equipment; and the training program approval process. The formal recommendations of this task force were forwarded to the FAA in October 1989. Essentially, the task force recommended that the FAA standardize the use of flight simulators and flight training devices, provide a means to certificate entities called training centers, and permit the training centers to apply for national approval of core training programs that could be used by individuals receiving training under parts 61, 121, 125, and 135. Following receipt of the recommendations, the FAA appointed an internal working group to consider the recommendations.

The FAA working group concurred with most of the recommendations of the task force and recommended that the FAA undertake a rulemaking project that would include the certificate training center concept. The FAA working group further recommended the establishment of an organization to implement and manage policy related to training centers and the increased use of flight simulators and flight training devices. This FAA national office would function as a single program manager for certificated training centers.

Related Activity

Two other FAA rulemaking projects address some of the same sections of part 61 that are covered in this NPRM. Phase I of a part 61/part 141 review, Pilot, Flight Instructor, and Pilot School Certification, Amendments 61–490 and 141–4, became effective April 15, 1991. Phase II, affecting parts 61, 141, and 143, is in the developmental stage. Although some of the sections of part 61 involved in Phases I and II of the comprehensive review of parts 61, 141, and 143 are the same as those addressed in this project, the issues are different.

A third project, Special Federal Aviation Regulation (SFAR) No. 58, "Advanced Qualification Program," (Amendment 61–88, effective October 2, 1990) allows air carriers conducting training under part 121 or part 135 to develop innovative approaches to training.

Restructuring of the affected regulatory sections to resolve any discrepancies among the three projects would occur in the final rule based on this NPRM and in Phase II of the review of parts 61, 141, and 143.

Discussion of the Proposal

General

In addition to proposing new rules pertaining to Category III authorizations, this NPRM generally addresses the following: (1) The creation of a new part 142 that would contain certification rules and operating rules for training centers; and (2) an expanded use of, and credit for, training, testing, and checking conducted in flight simulators and flight training devices in accordance with approved programs conducted at training facilities and training centers operated or certificated under SFAR 58, part 121, part 125, part 135, or proposed part 142.

The advantage of the proposed training center concept is that it would provide a common source for standardized, quality training accessible to any individual, operator, or air carrier. Training center certification would establish training rules separate from those for operations conducted under authority of certificates issued under other parts of this chapter. Program approval would be standardized through a national office, which should prove especially helpful for training centers operating in different FAA regions. The rules applicable to training centers would apply nationwide, and training programs would not be subject to approval by local FAA offices.

The proposed rules would not take away any of the uses for flight training devices currently allowed by the FAR, and would have virtually no adverse impact on the airmen who use flight simulator training services. Providers of flight simulation training under proposed part 142 would come under new regulatory controls that would enhance the use of qualified flight simulation in approved training programs. The proposed changes are consistent with a state-of-the-art training concept, and they recognize industry recommendations for the expanded use of sophisticated flight simulation. The FAA believes that, if a student has prerequisite experience, a qualified flight simulator or flight training device used in an approved training program will provide for an effective transfer of skills to the actual aircraft.

The FAA proposes to implement the joint industry/FAA task force recommendations concerning training centers by using an operational concept that would require a training center to obtain a certificate plus a training specification (similar to an operating specification for part 121 and part 135

[1] This task force was later subsumed by the Air Transportation Personnel Training and Qualifications Advisory Committee, established by FAA Order 1110.115, May 2, 1990. Today it continues to function as a subcommittee by the same name under the Aviation Rulemaking Advisory Committee.

operators). It is believed that this would add flexibility to accommodate changing conditions without changing the certificate itself.

Proposed part 142 would allow training centers that do not hold a part 121 or part 135 operating certificate to use approved flight simulators and approved flight training devices for airman training, testing, and checking. The FAA proposes to change parts 61, 121, 125, and 135 to provide a mechanism for crediting training in flight simulators toward the aeronautical experience, testing, and checking requirements of the FAR. Under the proposed rules, part 121 and part 135 certificate holders could continue to train personnel under those parts; however, training would be limited to training aircrew personnel employed by the certificate holder. Those certificate holders would be required to acquire a part 142 training certificate in order to conduct training for other persons or companies.

Under the proposed rules, the authority to issue pilot certificates and the provisions permitting certain training in a flight simulator or flight training device, rather than in an aircraft, would remain in part 61.

Proposed part 142 would regulate training center certification and operation to ensure that qualified flight simulators or flight training devices are used in conjunction with approved courses and curricula. The benefits of completing a course of standardized instruction in a training environment, and in a timeframe that allows for a building-block approach to learning, has been recognized and is reflected in the part 141 flight experience prerequisites for pilot certificates. Thus, part 141 flight experience requirements were used as the basis for many of the proposed part 142 initial requirements.

Category III Operations

This proposal recognizes that technological advances permit aircraft operated under part 91 to conduct Category III extreme reduced visibility landing approaches. As a result, part 91 would be amended to authorize such approaches in appropriately equipped aircraft. Part 61 would be amended to specify the training and testing requirements for Category III operations. Current § 61.67, Category II pilot authorization requirements, and Advisory Circular 120–28, *Criteria for Approval of Category III Landing Minima*, were consulted to develop the proposed amendments.

The FAA is not proposing to amend part 61 or part 91 to establish equipment requirements for Category III operations. Those requirements are established at the time of aircraft certification by means of the type certificate, or at the time of certification of after-market equipment by means of a supplemental type certificate.

Part 141 Pilot Schools

As proposed, pilot schools currently certificated under part 141 would be permitted to continue to operate as they do now. Certification of new pilot schools would also be permitted under part 141. A part 141 pilot school wishing to use a Level A through Level D flight simulator for more than the hours currently allowed in a pilot ground trainer as described in § 141.41(a)(1), however, would have to become certificated under proposed part 142.

This proposal does not include an increase in credits for use of simulators except in the structured environment created by part 142. Part 141 pilot schools that desire to become training centers certificated under part 142 would apply for certification and course approval under proposed part 142 in the same manner as other applicants.

Flight Training Devices

In several proposed sections in this NPRM, flight training devices are listed with aircraft and flight simulators as permitted equipment for various training, testing, or checking, although no flight training device may exist for that particular task. The FAA proposes to allow the possibility of approving flight training devices for training, testing, and checking a wide variety of tasks to allow and encourage the development of flight training devices in the future. By proposing the possibility of a wide variety of uses for flight training devices, which are generally less expensive than flight simulators, the FAA hopes to encourage the growth of simulation.

Terms

Part 1

Section 1.1 Category III Operations

A new section would be added to include a definition for Category III operations. The proposed definition would add the subcategories of Category IIIa, Category IIIb, and Category IIIc, which have been authorized for several years but not defined in the FAR. In addition to defining these operations, the FAA has set forth in § 61.68 of the NPRM the proposed requirements for pilot authorization to perform them.

SFAR 58

SFAR 58.2 *Definitions.* The definition of training centers would be revised to make it compatible with the definition of proposed § 142.3.

SFAR 58.11. *Approval of Training Qualification, or Evaluation by a Person Who Provides Training by Arrangement.* This section would be revised to include an expiration date. Two years after (the effective date of this amendment), a person who provides training by contract or similar arrangement would have to meet the training, qualification, or evaluation requirements set forth in proposed part 142. When adopting this SFAR, the FAA intended that it remain in effect for a short period of time only. By its own terms, it expires on October 2, 1995, unless sooner terminated. The FAA is proposing to remove it before this termination date because its provisions are covered under proposed §§ 142.85, 142.89, 142.91, and 142.93.

Part 61

Section 61.1a Definition of Terms

This proposed section would define several terms, including "authorized instructor," "flight simulator, airplane," "flight simulator, rotorcraft," and "flight training device." In the past, the terms "simulator" and "training device" have created confusion, so they would be more clearly defined under this section. As defined, the terms would make it clear that certain devices are not considered a flight simulator or a flight training device for purposes of this part. For example, devices such as airborne ILS simulators, ground trainers, instrument trainers, and flight trainers are not considered flight simulators or flight training devices under this part unless specifically evaluated and approved as such by the Administrator.

Flight Simulator

Proposed § 61.1a defines a flight simulator. It is defined as a full-sized replica of a specific type or make, model, and series aircraft cockpit, including the assemblage of equipment and programs necessary to represent the aircraft in ground and flight operations. As defined, a flight simulator would also include a force cueing (motion) system providing cues at least equivalent to a three-degree of freedom motion system. Under the definition, a flight simulator is a device that is approved by the Administrator for uses that would lead to credit for aeronautical experience, required training, checking, or testing.

Flight Training Device

Section 61.1a defines a flight training device as a replica of an aircraft's instruments, equipment, panels, and controls that is located in an open flight deck area or in an enclosed aircraft cockpit. This definition includes the equipment and programs necessary to represent the aircraft in ground operations and flight conditions. As defined, a flight training device would not be required to have a force cueing or visual system. However, like a flight simulator, a flight training device is a device that requires approval by the Administrator for all uses that would lead to credit for aeronautical experience, required training, checking and testing.

Simulated IFR Conditions

Some airmen have expressed concern about the meaning of the expressed terms "simulated IFR conditions" or "simulated instrument conditions" in part 61. There appears to be confusion over whether these conditions can be achieved by the use of hood devices only. These terms are used throughout the FAR to mean that instrument conditions may be simulated by artificially limiting pilot visibility outside the cockpit. Pilot visibility can be limited by a hood device, by artificially limiting visibility in an approved flight simulator or flight training device, or by other appropriate means. Proposed § 61.45 would permit the artificial limitation of visibility by these various means.

Tests and Checks

Generally, this notice uses the term "test" in lieu of the term "check." The notice uses the terms "initial test," "recurrent test," and "practical test." These terms refer to an examination, whatever its nature, on which the applicant receives a grade, even though the grade may only be "pass" or "fail."

An exception is found in proposed § 61.58 that would require a "proficiency check" for a pilot in command of an aircraft. A "proficiency check" is one type of periodic review of a pilot's proficiency as a pilot in command, rather than an initial test to determine that pilot's qualification to be a pilot. Thus, when referring to this type of requirement, the FAA believes that the word "check" is more appropriate.

Aircraft

Currently, the only flight simulators referred to in the FAR are airplane simulators. However, the word "aircraft" is used throughout this proposal to indicate that the proposed rules apply to training, testing, and checking in helicopters as well as in airplanes. When a proposed requirement is meant to apply to only a particular category or class of aircraft, the appropriate category or class, such as "airplane", "rotorcraft", or "helicopter", is specified.

Normal Landings and Normal Takeoffs

The terms "normal landing" and "normal takeoff" are used in several places in the proposed new sections of part 61. "Normal" is meant to describe maneuvers that are not emergency maneuvers or those that are not done with abnormal conditions. A "normal" takeoff or landing may include those: (1) With different flight path angles, from steep to shallow; (2), with different configurations, such as flaps down or up; (3) to or from different surfaces, such as sod, concrete, and wet or slushy surfaces, or (4) with various other differences that may be described in an aircraft flight manual. An emergency takeoff or landing is not a "normal" takeoff or landing. A takeoff or landing is not "normal" if it is labeled "abnormal" by the aircraft flight manual.

Easily Reached Controls

There has been some question about the meaning of the term "easily reached and operable in a normal manner" which appears in § 61.45. Under this proposal, controls that are "easily reached" are those that can be reached by any airman or applicant seated in a designated pilot seat, with seat belts, shoulder harness, or other provided restraints fastened.

Conventional Manner

This notice also proposes to change the term "normal manner", as it refers to the operation of an aircraft, to "conventional manner" and to define this term. This new definition should eliminate potential confusion associated with the use of such terms as "normal," "abnormal," or "emergency" performance. These different terms currently appear in many aircraft flight manuals and training programs.

As used in this proposed rule, in order to perform a normal, abnormal, or emergency maneuver in a "conventional manner," an applicant must use an aircraft that is equipped with one of the following: (1) A control wheel, stick, yoke, or cyclic control that in cruise flight, and in a forward movement, causes a decrease in pitch attitude, and rearward pressure causes an increase in pitch attitude; a left movement causes a bank to the left, and a movement to the right causes a bank to the right; and (2) rudder pedals or antitorque pedals which, when depressing the left pedal, cause the aircraft nose to yaw left and, when depressing the right pedal, cause the nose to yaw right.

Under this proposal, aircraft with controls that operate differently than described above may still be used for a practical test, if the examiner determines that the flight test can be conducted safely in the aircraft.

Section-by-Section Summary

Section 61.2 Certification of Foreign Pilots and Flight Instructors

This revised section would permit training centers and their satellite training centers, within the authority granted by the Administrator to those training centers, to add additional ratings and endorsements to U.S.-issued certificates, including adding ratings and endorsements to U.S. certificates issued to foreign pilots. It also would permit them to issue certificates to U.S. citizens, including U.S. citizens residing outside of the United States.

Since part 142 training centers located outside the United States would provide the same structured training (subject to FAA approval) as those within the United States, and since they would employ the same state-of-the-art training methods, the FAA believes that they would be qualified to add additional ratings and endorsements to U.S. certificates.

By proposing to permit training centers to issue certificates to U.S. citizens residing outside the United States, the FAA is fomenting the establishment of satellite training centers abroad. These centers would promote safety and economy by making advanced simulator training available to persons, such as U.S. certificated pilots living abroad, to whom it would not otherwise be readily available.

Section 61.3 Requirement of Certificates, Ratings, and Authorizations

This revised section would authorize instructors employed by a training center certificated under proposed part 142 to provide instruction and endorsements for Category III pilot-in-command and second-in-command authorizations, which previously have been allowed by exemption only. This proposal would eliminate the administrative burden associated with the issuance of exemptions for this purpose.

The following instruction and endorsements currently authorized by the Administrator under this section

would continue to be authorized: (1) Instruction in lighter-than-air aircraft given by an appropriately rated commercial pilot as authorized under § 61.139; (2) instruction in air transportation service as authorized under § 61.169 and given by the holder of an ATP certificate; and (3) instruction and associated endorsements given by a person authorized under § 61.41 (foreign and military).

Under this proposed section, a pilot would be required to gain a Category III pilot authorization in order to perform Category III operations, similar to the way a pilot is required to hold a Category II pilot authorization under the current rules to conduct Category II operations. Currently, only pilots operating under part 121, and authorized to perform Category III approaches, can perform-those approaches. 'However, as discussed above, the technology is now available for aircraft operating under several parts of the FAR, including part 91, 'to conduct Category III approaches. This proposed section would recognize the advances in aircraft and airport navigation and guidance systems and would provide a means to authorize airmen to take advantage of them. The FAA believes that it is now safe to extend Category III authorizations to pilots operating under several parts of the FAR, so long as the pilots have demonstrated the ability to perform these operations and the aircraft is certified and equipped to perform Category III operations.

Section 61.4 Qualification and Approval of Flight Simulators and Flight Training Devices

Under this proposed section, flight simulators and flight training devices must be qualified and approved by the Administrator for training, testing, and checking. In addition, each particular maneuver, procedure, or crewmember function to be performed would be subject to the approval of the Administrator. Lastly, the Administrator must qualify and approve the representation of the specific category and class of aircraft, a particular variation within type of aircraft, or set of aircraft, in the case of some flight training devices.

Section 61.13 Application and Qualification

This section would be revised to permit the use of an authorized flight simulator or authorized flight training device for simulated instrument conditions. As discussed above, some airmen have expressed concern about the meaning of the current terms "simulated IFR conditions" or "simulated instrument conditions." Because a hood and other view limiting devices are not the only means of artificially limiting visibility, this section would be changed to recognize that visibility may be artificially limited in flight simulators and flight training devices. In addition, proposed § 61.13(i) would require that a pilot hold a Category III pilot authorization prior to conducting a Category III operation. In view of the complexities and perils associated with Category III approaches, the FAA believes it is essential that a pilot demonstrate the capability to perform those approaches before conducting a Category III operation.

Section 61.21 Duration of Category II and Category III Pilot Authorizations

In addition to a change in the title, this section would be revised to provide that Category II and Category III pilot authorizations would expire 6 months after last issued or renewed. The FAA believes that this authorization should be renewed 6 months after issuance in order to ensure that a pilot has a continuing capability to perform Category III operations. The FAA believes that critical skills may be lost if not reviewed and retested within 6 months after being last demonstrated.

Section 61.39 Prerequisites for Flight Tests

A 60-calendar-day time limit for completion of all increments of the practical test (i.e., the oral increment, the flight simulator increment, and the flight increment) is proposed under this section.

In the event that the entire practical test were not completed within the prescribed 60 calendar days, an applicant would have to retake the entire practical test, including those increments satisfactorily completed more than 60 calendar days previously.

The FAA believes that all elements of this test must be satisfactorily completed within 60 days to ensure that all skills are current at the time the test is passed. If all skills being tested are not satisfactorily demonstrated within that period of time, the FAA believes that those not demonstrated may be lost (due to memory loss) before being retested.

Section 61.45 Flight Tests: Required Aircraft and Equipment

Paragraph (a) of this revised section would clarify that an applicant could use a flight simulator or a flight training device for those tasks of a practical test for which the flight simulator or flight training device has been approved. Currently, under part 61 a flight simulator or flight training device may be used to demonstrate second-in-command qualifications and also may be used to train and test for the ATP certification test. However, currently this section does not clearly permit the use of flight simulators or flight training devices for practical tests.

Air carrier training and certification program and simulator exemptions have allowed flight simulators and flight training devices to be used to meet the testing requirements and flight experience requirements for ATP certification. Based on its evaluation of these exemptions and their results, the FAA believes that, under certain conditions, the entire flight increment of the practical test can be successfully performed in an approved flight simulator or flight training device. It further believes that all or part of the flight increment can be successfully performed in a flight simulator or flight training device for all certificates and ratings issued under this section. Accordingly, it is proposed to revise this section in order to permit this practice.

Section 61.51 Pilot Logbooks

This revised section would permit the logging of flight simulator and flight training device time by adding them to paragraph (b)(1)(iv), which currently permits logging of time in aircraft only. This section already provides for logging of instrument flight time in an aircraft. Paragraphs (b)(3)(iii) and (c)(4)(ii) would be revised to permit the logging of instrument flight time in an approved flight simulator or flight training device. Paragraph (b)(1)(ii) and (b)(2)(viii) would be revised to permit the logging of flight instruction in a flight simulator or flight training device. These revisions are needed to permit the logging of simulated flight time that is authorized by other sections of this proposal.

Proposed § 61.51(c)(5) provides that all time logged as instruction time must be certified by the authorized instructor from whom it was received. This proposal is intended to ensure that an applicant's logbook reflects all required instruction which was provided by an authorized instructor.

Section 61.55 Second-in-Command Qualifications

This proposed section would permit most second-in-command training, testing, and checking, for both airplanes and helicopters, to be demonstrated in a flight simulator if the demonstration is made in an approved course conducted by a training center certificated under proposed part 142. However, under

proposed § 61.55(b)(iv), initial second-in-command qualification tests for a particular category and class or type of aircraft would require at least one takeoff and one landing to be satisfactorily completed in an aircraft of that category, class, and type as applicable.

The FAA believes that some minimal experience with the category, class, and type of aircraft, if applicable, is required for those second-in-command applicants not previously qualified in any capacity in an aircraft requiring a crew of more than one person. With the exception of the takeoff and landing that would have to be performed in the aircraft, the FAA believes that, based on its evaluation of the results of training in flight simulators, the training, testing, and checking for second-in-command qualifications can be satisfactorily demonstrated in a part 142 training course that is subject to FAA approval.

Section 61.56 Flight Review

Under current § 61.56, the flight review can be performed only in an aircraft.

Proposed § 61.56(g) would permit the use of flight simulators or flight training devices for the flight review if: (1) The flight simulator or flight training device is approved by the Administrator for that purpose; and (2) the flight review is accomplished in an approved course conducted by an appropriately rated training center certificated under proposed part 142. All maneuvers that might be included in a flight review have been conducted in flight simulators under exemptions previously granted by the FAA. Based on its evaluation of the results, the FAA believes that the flight review can be successfully accomplished in an appropriate flight simulator or flight training device.

Currently, landing maneuvers, which likely would be required during a flight review, can be conducted only in a flight simulator qualified as Level B or higher. This is because an applicant can demonstrate landing capability in those simulators. Under proposed § 61.57(g)(3), however, the review could be accomplished in a Level A flight simulator or in a flight training device, provided that the Level A flight simulator or flight training device is qualified for all other maneuvers and procedures included in an approved flight review course and provided that the applicant is current in accordance with § 61.57(c) . Therefore, under the proposed rule, the flight review could be conducted in a Level A simulator only if the applicant has previously demonstrated the capability to land the aircraft during a flight review conducted in aircraft.

Section 61.57 Pilot in Command Currency

In addition to a change in the title of this section to indicate that it contains pilot-in-command currency requirements, the proposed revision to paragraph (c)(4) would permit airmen to accomplish required takeoffs and landings in a flight simulator qualified and approved by the Administrator for that purpose. The airman would have to accomplish the takeoffs and landings in an approved course conducted by a training center certificated under proposed part 142.

For night experience, § 61.57(d)(1) would require that the visual system of the authorized flight simulator be adjusted to represent the period from 1 hour after sunset to 1 hour before sunrise.

Also, under the proposal, paragraph (e) would be revised to permit pilots to meet instrument currency requirements in an approved flight simulator or flight training device.

Section 61.58 Pilot-in-Command Proficiency Check: Operation of Aircraft Requiring More Than one Required Pilot

FAA proposes to revise this section to permit airmen, under certain conditions, to accomplish required pilot-in-command proficiency checks entirely in a qualified and approved flight simulator. In addition, § 61.58(d) would allow several other practical tests to be credited toward the requirements for the required pilot-in-command proficiency check. Proposed § 61.58(f) would require that, in order to accomplish the recurrent check entirely in a flight simulator, the pilot must have performed the 12-and-24-month proficiency checks in an aircraft, as described in proposed § 61.58(a) (1) and (2). If the pilot were not current in accordance with § 61.58(a) (1) and (2), a portion of the check test would have to be accomplished in an aircraft.

If a flight simulator qualified as Level B or higher is not used to satisfy the requirements of proposed § 61.58, the pilot also would have to perform the landings required by proposed § 61.57 (c) and (d) in an aircraft, since only a Level B or higher flight simulator can be used for landing. If, because of limitations of the flight simulator used for a proficiency check, the pilot receiving the proficiency check cannot demonstrate proficiency in a required maneuver during the flight simulator increment of the proficiency check, § 61.58(e)(1) proposes that the omitted maneuver be annotated in the pilot's training record. The pilot would be required to demonstrate proficiency in that maneuver to the Administrator before performing that maneuver as pilot in command.

For example, a proficiency check requiring circle-to-land maneuvers would have to be accomplished in a flight simulator equipped with a visual system that permits accomplishment of the circling approach task. If the flight simulator used is not qualified for circling approaches and the applicant does not demonstrate circling approaches at the training center, proposed § 61.58(e)(3) would require that the training center annotate the applicant's records with the statement, "Proficiency in circling approaches not demonstrated." In addition, proposed § 61.58(e)(2) would restrict the applicant from performing circling approaches as pilot in command, during conditions less than basic VFR weather minimums. This restriction would remain until proficiency in circling approaches in either an aircraft or a flight simulator qualified for circling approaches is demonstrated to a person authorized by the Administrator to conduct the required check.

Under exemptions granted by the FAA, and pursuant to approved air carrier training programs, pilot-in-command proficiency checks have been performed for years in approved flight simulators. The FAA has evaluated the performance of pilots who have received their flight checks in this manner. Based on this evaluation, it believes that these required checks can be successfully performed in an approved flight simulator.

Section 61.63 Additional Aircraft Ratings for Other Than Airline Transport Pilot Certificate (for Parts 121 and 135 use Only)

The FAA proposes to revise this section to make it applicable only to applicants who are pilot crewmember employees of a part 121 or part 135 certificate holder. This section would continue to set forth the requirements for adding additional aircraft ratings to pilot certificates other than ATP certificates. The requirements for adding additional aircraft ratings to ATP certificates are addressed in existing § 61.157.

The FAA proposes to create new §§ 61.64 and 61.158. These proposed sections contain requirements for airmen other than pilot crewmember employees of part 121 certificate holders and part 135 certificate holders. Section 61.158, for example, would provide for

additional ratings for ATP certificate holders who are not applying as aircrew employees of air carriers.

These proposed revisions are clarifying in nature. They would make clear which requirements are applicable to aircrew employee applicants of air carriers and which are applicable to other applicants.

In addition, under the proposed sections, required flight instruction and testing could be performed in qualified and approved flight simulators and flight training devices.

Section 61.64 Additional Aircraft Ratings for Other Than Airline Transport Pilot Certificates (for Other Than Parts 121 and 135 use)

Under this proposed section, an applicant for any additional rating would have to comply with the requirements applicable to the class and category for which the rating is sought. For example, an applicant who holds a commercial pilot certificate with a rotorcraft category rating and a helicopter class rating, and who is seeking a particular airplane type rating, would have to satisfy the requirement for the airplane category rating and class rating (such as a multiengine land class rating) sought.

Under this proposed section, an applicant for an additional rating could obtain the training for that rating in a flight simulator if the training is given in an approved course conducted by a training center certificated under proposed part 142. This practice has been permitted for years pursuant to exemptions granted by the FAA, and the training received has proven to be effective.

Section 61.65 Instrument Rating Requirements

References in the current rule to the terms such as "instrument ground trainer" and "airborne ILS simulator" are outdated and, therefore, would be deleted. The requirements of this section could be met in a flight simulator or flight training device, provided that the flight training device or flight simulator is qualified and approved by the FAA for the rating for which application is made.

Proposed § 61.65(e)(2)(ii) would allow the 20 hours of instrument instruction by an authorized instructor in a flight simulator or flight training device, currently allowed under part 61, to be increased to 30 hours of instruction in a flight simulator or flight training device if the instruction is accomplished in an approved course conducted by a training center certificated under proposed part 142. The FAA believes that this increase is justified because the instruction would be conducted pursuant to an FAA-approved course that would prevent unneeded duplication of some tasks and the omission of others, and that would provide continuity of training.

For similar reasons, this section would be revised to permit the total pilot aeronautical experience requirement for the instrument rating to be reduced from 125 hours of pilot flight time as currently required by § 61.65(e)(1) to 95 hours of pilot flight time, which could include 35 hours of simulated or actual instrument flight time if the entire instrument curriculum were accomplished under an approved part 142 course.

A provision would be added that would permit a part 142 certificate holder to give a student an instrument rating if that student has fewer than the 95 hours of pilot flight time and fewer than the 35 hours of simulated or actual instrument experience time currently required. However, in order to gain this privilege, the training center would be required to demonstrate that it can provide proper training in fewer hours than currently required. To accomplish this, it would have to propose a method of tracking graduates and collecting data to validate training program effectiveness. Data to be tracked to point to program effectiveness might include incidents, accidents, hours flown, and type of flying. Training centers would have to present historical data covering at least 1 year (or other period of time approved by the Administrator) before it could be granted a reduction in the minimum hours prescribed in this proposed section. Data covering performance over this period of time is considered necessary to properly evaluate student performance. Data covering a shorter term would not be sufficient to allow the FAA to evaluate performance during varying seasonal conditions.

Section 61.67 Category II Pilot Authorization Requirements

This section would be revised to permit the use of a flight simulator or flight training device to meet Category II pilot authorization requirements. The 25 hours of instrument flight time currently allowed in a flight simulator could be increased to 40 hours if the training is accomplished in an approved course conducted by a training center certificated under proposed part 142. In addition, the requirement for 50 hours of night flight time under VFR conditions as pilot in command would be changed to 50 hours of night flight time as pilot in command regardless of the weather conditions or flight rules observed during those hours. This revision would correct an apparent error, namely, the requirement that the 50 hours be flown under VFR conditions. As revised, this section would permit this requirement to be met under either VFR or IFR conditions.

Section 61.68 Category III Pilot Authorization Requirements

This new section would set forth the requirements for Category III approaches. The requirements could be demonstrated in a qualified flight simulator or qualified flight training device approved as part of a course conducted by a training center certificated under proposed part 142.

Section 61.109 Airplane Rating: Aeronautical Experience

Credit for instruction received in approved flight simulators and approved flight training devices would be authorized under this proposed section. Currently, 20 hours of flight instruction are required, and all of that instruction must be received in an airplane. The flight instruction received in a flight simulator or flight training device would have to be accomplished in a flight simulator or flight training device representing an airplane.

Under this proposed section, a maximum of 2.5 hours of flight simulator or flight training device instruction from an authorized instructor would be creditable toward the 20 hours of flight instruction required for a private pilot certificate. The 2.5 hours of instruction time could be increased to 5 hours of instruction in a flight simulator or flight training device, provided the instruction is accomplished in an approved course conducted by a training center certificated under proposed part 142.

Current § 61.109 requires at least 40 hours of flight instruction and solo flight time. Under this proposed section, the 40 hours of aeronautical experience could be reduced to 35 hours provided that the entire private pilot curriculum is accomplished under an approved part 142 course.

The 35 hours of aeronautical experience could be further reduced under paragraph (i) of this proposed section if the applicant completes an approved private pilot course and if the Administrator determines that a further reduction is appropriate based on data validating training program effectiveness. Data to be tracked to point to program effectiveness might include incidents, accidents, hours flown, and type of flying. Training centers would have to present historical data covering at least 1 year of student

performance before a further reduction could be considered.

Section 61.113 Rotorcraft Rating: Aeronautical Experience

Under current § 61.113 an applicant for a private pilot certificate with a rotorcraft category rating must have at least 40 hours of flight instruction and solo flight time in aircraft. Instruction in flight simulators or flight training devices currently is not authorized.

Proposed § 61.113 would authorize credit for instruction received in flight simulators and flight training devices approved by the Administrator. To be credited, however, the instruction would have to be accomplished in a flight simulator or flight training device representing a rotorcraft. Unless accomplished in a proposed part 142 training center, a maximum of 2.5 hours of flight simulator or flight training device instruction from an authorized instructor would be creditable toward the total aeronautical experience requirement for the private pilot certificate.

Proposed § 61.113(a)(3) would increase the 2.5 hours of instruction time to 5 hours, provided the instruction is accomplished in an approved course conducted by a training center certificated under proposed part 142.

In addition, revised § 61.113(e) would permit the total aeronautical experience requirement for the private certificate to be reduced to 35 hours if the entire private curriculum were accomplished under an approved part 142 course. A provision to allow a further reduction is included in paragraph (e) of this proposed section. The Administrator could approve a further reduction based on the considerations discussed above under proposed § 61.109(i).

Section 61.129 Airplane Rating: Aeronautical Experience

Under current § 61.129(b), an applicant for a commercial pilot certificate with an airplane rating must have at least 250 hours of flight time as a pilot, which may include not more than 50 hours of instruction in a ground trainer acceptable to the Administrator.

Under proposed § 61.129(b)(1)(ii), up to 100 hours of flight simulator instruction or flight training device instruction may be credited toward the 250 hours of total flight time if the instruction is accomplished in an approved course conducted by a training center certificated under proposed part 142. To be credited toward the total flight time requirement for a commercial pilot certificate, flight simulator or flight training device instruction received would have to be accomplished in a flight simulator or flight training device representing an airplane.

In addition, proposed § 61.129(c) would permit the total fight time for the commercial certificate to be reduced to 190 hours if the entire commercial curriculum were accomplished in an approved course conducted by a training center certificated under proposed part 142.

Several years ago, the 250-hour total flight time requirement of part 61 was reduced to 190 hours if the applicant for a commercial pilot certificate received his or her training for that certificate from a pilot school certificated under part 141. This reduction was authorized because these schools offer FAA-approved training programs which use a building-block approach and provide continuity of training. Based on its evaluation of the results, the FAA believes that 190 hours of flight time has proven to be adequate and safe under these circumstances.

Since training centers certificated under part 142 would offer advanced simulation training, and because of demanding course approval criteria and rigorous oversight of part 142 training centers, the FAA believes that the total flight time required for a commercial pilot certificate may be reduced even below 190 hours, if the applicant receives his or her training from a training center certificated under proposed part 142.

Accordingly, a provision to allow further reduction of the 190 hours, based on a demonstrated ability to accomplish training requirements in less time, is set forth in proposed § 61.129(c). The Administrator could approve a further reduction based on the considerations discussed above under proposed § 61.109(i).

Section 61.131 Rotorcraft Rating: Aeronautical Experience

Under current § 61.131, an applicant for a commercial pilot certificate with a rotorcraft category rating must have at least 150 hours of flight time, including at least 100 hours in powered aircraft, 50 hours of which must be in a helicopter.

Under this proposed section, the applicant could obtain 35 hours of credit toward the 150 hour flight time requirement in a flight simulator or flight training device, or a credit of up to 50 hours of the total required flight time in a flight simulator or flight training device if the flight simulator time or flight training device time is obtained from a training center certificated under proposed part 142. There is no current provision for crediting flight simulation time toward this rating. To be credited toward the 150-hour flight time requirement, flight simulator or flight training device instruction received would have to be accomplished in a flight simulator or flight training device representing a rotorcraft.

A provision to allow a further reduction of the 150-hour flight time requirement, based on demonstrated ability to accomplish training requirements in less time, would also be added under this proposed section. The Administrator could approve a further reduction based on the considerations discussed above under proposed § 61.109(i).

Section 61.155 Airplane Rating: Aeronautical Experience

Under current § 61.155(b)(2), an applicant for an airline transport pilot certificate with an airplane rating must have had at least 1,500 hours of flight time as a pilot, including, among other things, at least 75 hours of actual or simulated instrument time, at least 50 hours of which were in actual flight. Since 50 hours must have been in actual flight, up to 25 hours could be obtained in a simulator.

Under this proposed section, the 25 hours of simulated instrument time currently allowed could be increased to 50 hours if accomplished in an approved course conducted by a training center certificated under proposed part 142. To be credited toward the total flight time requirement, flight simulator or flight training device instruction received would have to be accomplished in a flight simulator or flight training device representing an airplane.

Section 61.157 Airplane Rating: Aeronautical Skill (for Parts 121 and 135 use Only

The FAA proposes to revise this section to make it applicable to applicants for an ATP certificate (with an airplane rating) who are pilot crewmember employees of an air carrier certificated under part 121 or part 135. The FAA proposes a new § 61.158 that would apply to other applicants, as discussed below.

Section 61.158 Airplane Rating: Aeronautical Skill (for Other Than Parts 121 and 135 use)

This proposed new section contains the broad areas of skill requirements for an ATP certificate with a single-engine or multiengine class rating or type rating for applicants who are not participants in an air carrier training program. An applicant for any added rating would have to comply with the requirements for that rating. For example, an

applicant who holds an ATP certificate with a rotorcraft category rating and a helicopter class rating, and who is seeking a particular airplane type rating, would have to satisfy the requirement for the airplane category and multiengine land class ratings.

Under paragraph (c) of this proposed section, an applicant for an ATP certificate (other than an air carrier employee) with a single engine or multiengine class rating or type rating may perform the tasks required for these ratings in an approved flight simulator or flight training device. However, the flight simulator or flight training device could not be used to perform those tasks unless the applicant uses them as part of an approved course conducted by a training center certificated under proposed part 142. The FAA believes that the required tasks for these ratings can be satisfactorily demonstrated in a flight simulator or flight training device used by a training center. These tasks currently are being successfully demonstrated by simulation under exemptions.

Proposed § 61.158(a)(2) would incorporate Amendment No. 61–90 (56 FR 11326; March 15, 1991) which adopted certain requirements for an ATP certificate with single-engine or multiengine class rating or type rating. The required areas of operation are set forth in this proposed section rather than in an appendix.

Section 61.161 Rotorcraft Rating: Aeronautical Experience

Under current § 61.161(b), an applicant for an ATP certificate with a rotorcraft category and helicopter class rating must have at least 1,200 hours of flight time as a pilot, including 75 hours of instrument time, 25 hours of which may be simulated instrument time in a flight simulator or flight training device.

The 25 hours of simulated instrument flight time allowed under this section could be increased to 50 hours if accomplished in an approved course at a training center certificated under proposed part 142. To be credited toward the total flight time requirement, flight simulator or flight training device instruction would have to be accomplished in a flight simulator or flight training device representing a rotorcraft.

Section 61.163 Rotorcraft Rating: Aeronautical Skill

Under current § 61.163, an applicant for an ATP certificate with a rotorcraft category and helicopter class rating, or additional aircraft rating, must pass a practical test on certain maneuvers in a helicopter.

This proposed section would permit an airman to perform the practical test showing competence in the skill areas set forth in this section in either a helicopter, a flight simulator, or flight training device used as part of an approved course conducted by a training center certificated under proposed part 142.

Simulator exemptions have allowed flight simulators to be used for all or part of the pilot certification tests for several years. Based on its evaluation of the results, the FAA believes that the required maneuvers can be satisfactorily demonstrated in an approved flight simulator. Flight training devices are included in the proposal to allow the possibility that a flight training device may be developed and qualified for all or part of the maneuvers that must be demonstrated during this practical test.

Section 61.169 Instruction in Air Transportation Service

This section would require that airline transport pilots giving instruction in Category II or Category III operations be trained and checked in Category II or Category III operations, as applicable.

Section 61.187 Flight Proficiency

The proposed change to paragraph (a) of this section would permit an applicant for the flight instructor certificate to receive the required instruction for a flight instructor certificate in a flight simulator or flight training device used as part of an approved course conducted by a training center certificated under proposed part 142. At present, there is no provision for accomplishing the practical test in anything other than an aircraft.

The FAA believes that the subject areas can be effectively taught and learned in a structured course that includes ground instruction and simulation. Although the required instruction has not been accomplished previously in a flight simulator pursuant to exemptions, the FAA nevertheless believes that it can be successfully accomplished in an approved flight simulator or flight training device.

Section 61.191 Additional Flight Instructor Ratings

This section would permit an airman to accomplish the required practical tests for these ratings in a flight simulator or flight training training device used as part of an approved course conducted by a training center certificated under proposed part 142. At present, there is no provision for accomplishing the practical test in anything other than an aircraft. The FAA believes that the test can be effectively accomplished and evaluated in an approved flight simulator or flight training device.

Section 61.195 Flight Instructor Limitations

This section would be revised to require flight instructors giving instruction in Category II or Category III operations to be trained and checked in Category II or Category III operations, as applicable. The FAA believes that this measure is necessary in order to ensure that flight instructors are qualified in the subjects that they teach.

Section 61.197 Renewal of Flight Instructor Certificates

This section would be amended to permit an applicant for renewal of a flight instructor certificate to conduct the required practical test in a flight simulator or flight training device in an approved course conducted by a training center certificated under proposed part 142. At present, there is no provision for accomplishing the practical test in anything other than an aircraft. The FAA believes that the practical test can be effectively accomplished and evaluated by using simulation.

Appendix A to Part 61

The FAA proposes that appendix A to part 61 be retitled to read "Practical Test Requirements For Airplane Airline Transport Pilot Certificate and Associated Class and Type Ratings (For part 121 and part 135 Use Only)." Practical testing standards for applicants other than aircrew employees of part 121 and part 135 operators are specified in proposed § 61.158. This change is largely editorial in nature, and is necessary due to the proposed revisions to § 61.157 that are discussed above.

Integration of Appendix B to Part 61 Into Practical Test Standards

The FAA proposes to delete appendix B to part 61. That appendix contains the practical test requirements for rotorcraft ATP certificates with a helicopter class rating and associated type ratings. The use of Practical Test Standards (PTS) has essentially rendered Appendix B obsolete. The FAA used the PTS for several years to detail those areas of operation subject to testing for certificates and ratings. The PTS lists the specific tasks, conditions, and performance standards required to demonstrate competence.

Appendix B would no longer be necessary since proposed § 61.163 sets forth the broad areas of operations that contain maneuvers and procedures that would have to be demonstrated by an applicant for an airline transport pilot certificate with a rotorcraft category and helicopter class rating or a type rating.

Sections 61.65, 61.67, 61.109, 61.113, 61.129, 61.131, 61.155, 61.161 Flight Simulator and Flight Training Device Authorizations

Figure 1, included in the **SUPPLEMENTARY INFORMATION**, compares flight simulator and flight training device authorizations currently allowed under part 61 to proposed flight simulator and flight training device authorizations. Expanded flight simulator and flight training device credit would be permitted under approved courses of training conducted by a training center certificated under part 142. Airmen may gain maximum credit for the use of flight simulators and flight training devices by completing entire curricula at training centers.

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FLIGHT HOUR SUMMARY - FLIGHT SIMULATOR AND FLIGHT TRAINING DEVICE AUTHORIZATION

Rating or Authorization	Current FAR Reference	NPRM FAR Reference	Current Requirement (See Note 1)	NPRM Requirement (See Note 2)	
				Basic and with simulator training completed at training center	Entire curriculum completed at training center (See Notes 3 and 4)
Instrument	61.65	61.65	(1) 125 hrs. flight time including 50 hrs. PIC cross country (2) 40 hrs. actual or simulated instrument time including maximum of 20 hrs. in simulator (3) 15 hrs. instrument flight time including at least 5 hrs. in airplane or helicopter	(1) Same (2) Same, except 20 hrs. in simulator increased to 30 hrs. (3) Same	95 hrs. flight time including maximum of 35 hrs. of simulated or actual instrument time
Category II Pilot Authorization	61.67	61.67	(1) 50 hrs. night flight time, VFR, as PIC (2) 75 hrs. instrument time including maximum of 25 hrs. in simulator (3) 250 hrs. of cross country as PIC	(1) Same (2) Same, except 25 hrs. in simulator increased to 40 hrs. (3) Same	As approved by the Administrator
Category III Pilot Authorization		61.68		(1) 50 hrs. of night flight time as PIC (2) 75 hrs. instrument time including maximum of 25 hrs in simulator (may be increased to 40 hrs.) (3) 250 hrs. cross country as PIC	As approved by the Administrator
Private Pilot Airplane	61.109	61.109	(1) 40 hrs. of flight instruction (2) 20 hrs. solo flight	(1) Same except new basic authorization of 2.5 hrs. in simulator, with increase to 5 hrs. (2) Same	35 hrs. flight time in aircraft or simulator
Private Pilot Rotocraft	61.113	61.113	40 hrs. flight time	Same, except new basic authorization of 2.5 hrs. in simulator, with increase to 5 hrs.	35 hrs. flight time in aircraft or simulator
Commercial Pilot Airplane	61.129	61.129	250 hrs. flight time including maximum of 50 hrs. in simulator	Same, except 50 hrs. simulated time increases to 100 hrs.	190 hrs. flight time in airplane or simulator
Commercial Pilot Rotocraft, Helicopter	61.131	61.131	150 hrs. flight time including 50 hrs. in helicopter	Same, except new basic authorization of 50 hrs. in simulator, including 35 hrs. of helicopter in simulator	150 hrs. flight time in helicopter or simulator
ATP Airplane	61.155	61.155	1,500 hrs. flight time including maximum of 25 hrs. in simulator	Same, except 25 hrs. in simulator increases to 50 hrs.	As approved by the Administrator
ATP Rotocraft	61.161	61.161	1,200 hrs. flight time including maximum of 25 hrs. in simulator	Same, except 25 hrs. in simulator increases to 50 hrs.	As approved by the Administrator

Figure 1

Notes: (1) Current regulation refers to simulator time as "instrument ground trainer" or "sythetic trainer," or "ground trainer"
(2) All simulator time must be in a "flight simulator" or "flight training device" in NPRM
(3) Flight time hours, including simulator time, may be reduced by the Administrator when Part 142 training center requests reduction and provides evidence that training can be satisfactorily accomplished in fewer hours
(4) The requirements for the issuance of certificates or ratings will be contained in the training center's curriculum, as approved by the Administrator.

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Part 91

Section 91.191 Category II and Category III Manual

In this proposed section, the title would be changed to include Category III manuals. The text would set forth the proposed requirements for Category III manuals for civil aircraft conducting those operations. This section has specified the requirements for a Category II manual for several years. This proposed section would provide similar information to those operators desiring to conduct Category III operations. At present, there is no regulatory guidance for part 91 operators who might anticipate Category III operations.

Section 91.205 Powered Civil Aircraft With Standard Category U.S. Airworthiness Certificates: Instrument and Equipment Requirements

This revised section would include reference to instrument and equipment requirements for Category III operations. The discussion under proposed § 91.191 applies to this proposal as well.

Part 121

Section 121.1 Applicability

This section would be amended (after 2 years from the effective date of part 142) to be made applicable to all persons who train, check, or qualify air carrier personnel. This would include, among others, instructors authorized under SFAR 58.

Section 121.400 Applicability and Terms Used

This section would be amended to require a part 121 certificate holder to obtain part 142 certification in order to train persons other than employees of the certificate holder. However, part 121 certificate holders operating under an exemption to provide training for crewmembers, aircraft dispatches, or personnel other than those employed by the certificate holder, and training facilities operating under an exemption to part 121 to provide training for a part 121 certificate holder, would be given 2 years from the effective date of the amendment based on this NPRM to obtain certification under part 142.

Subpart N of part 121 requires an air carrier subject to that part to have a training program for its employees subject to that part. The FAA proposes that all training provided to air carriers by trainers other than an air carrier training its own aircrew employees, as required by subpart N, be provided by a training center certificated under part 142.

At present, there is no regulatory provision for such training; however, there are exemptions permitting training of air carrier aircrew employees by other air carriers and by training entities that are not air carriers. This proposed change would replace those exemptions. The training currently provided by one carrier for another tends to emphasize tasks that are tailored to suit the unique needs of the carrier providing the training. This training may not be entirely suitable or effective to meet the unique needs of other carriers. Therefore, the FAA believes that crewmembers and others employed by part 121 certificate holders (other than their own) should be given standardized training that would prepare them to perform their functions effectively (without a need for retraining) for any carrier. The FAA believes that the training standards contained in proposed part 142 are sufficiently comprehensive to accomplish this purpose.

The FAA also believes that a part 121 certificate holder that trains crewmembers and other personnel (other than its own) is conducting a function that is both unrelated to its primary function—the carriage of passengers for compensation or hire—and significant enough to warrant certification as a separate function. Accordingly, under the proposed rules, a part 121 certificate holder would have to obtain certification as a part 142 training center in order to train the employees of other carriers.

These rules propose a 2-year grace period to permit part 121 certificate holders to make necessary arrangements in order to obtain part 142 certification. This 2-year period would also provide the FAA sufficient time to review and approve applications for certification under the new part.

Section 121.401 Training Program: General

This section would be amended to require that operators subject to this part provide or require a used training center to provide certain training and evaluation personnel, facilities, and courseware and to make competency certification. Under paragraph (c) of this proposed section, instructors and others would have to certify to the competency of crewmembers and others whom they have trained or checked. These provisions would ensure that a training center providing training to an air carrier would meet the same standards in these areas that the air carrier currently is required to meet.

Section 121.402 Training Program: Special Rules

Under this proposed section, a part 121 certificate holder could provide training, testing, and checking services to others by contract. To provide these services, the certificate holder would have to hold appropriate ratings and specifications issued under part 142 and would have to meet certain other requirements. This proposed section should promote the use of training centers. It also clarifies that an air carrier does not have to repeat the training program elements for which it contracts.

Section 121.403 Training Program: Curriculum

This section would be amended to require that each certificate holder include in each curriculum a list of flight simulators and flight training devices that will be used in that curriculum, and a list of maneuvers, procedures, and functions approved for each flight simulator and flight training device.

Section 121.405 Training Program and Revision: Initial and Final Approval

This section would be amended to allow an air carrier to arrange with a training center for required training before the carrier's training program is given final approval by the FAA. The FAA believes that the standards set forth in proposed part 142 are comprehensive and appropriate for the training needs of all air carriers. Accordingly, it believes that training can commence by contract with a certificated training center before the carrier's training program is given final approval.

Section 121.407 Training Program: Approval of Flight Simulators and Other Training Devices

This section would be amended to specify that a flight simulator or flight training device used in a training program approved under this part must be used to satisfy the requirements of the certificate holder's low-altitude windshear training program that is required by § 121.409(d). This proposed section would allow a training center to conduct this training, and it would allow an air carrier to use a training center to satisfy this requirement.

Section 121.431 Applicability

This section would be amended to permit training centers to provide testing and checking services by contract or otherwise to persons subject to the requirements of part 121.

Section 121.432a Training, Testing, and Checking Conducted by Training Centers: Special Rules

This proposed new section would provide a means for crediting the training, testing, and checking conducted under part 142 toward the requirements of part 121.

Section 121.439 Pilot Qualification: Recent Experience

This section would be amended to indicate that pilot aircrew members may accomplish recency of experience requirements in certain flight simulators, and that evaluators who are employed by a training center certificated under part 142 may observe the required takeoffs and landings and certify that the person observed is proficient. This same function has been successfully performed by evaluators of part 121 training programs.

Section 121.441 Proficiency Checks

This section would be amended to permit required proficiency checks to be given by a pilot evaluator who is authorized to give the checks under proposed part 142.

Part 121, *Appendix H.* This appendix would permit advanced simulator training to be conducted by training centers certificated under part 142. Under this appendix, holders of advanced simulation plans would have to ensure that all instructors and evaluators would have to participate in either an approved regularly scheduled line-flying program or an approved line-observation program.

Part 121, *Appendix I, paragraph III, Employees who must be tested.* This appendix would be revised to include persons performing simulated flight instruction.

Part 125

Section 125.285 Pilot Qualifications: Recent Experience

The term "visual simulator" would be changed to "qualified and approved flight simulator." "Visual simulator" is an obsolete term.

Section 125.296 Training, Testing, and Checking Conducted by Training Centers: Special Rules

This section would be added to permit a crewmember to credit the training, testing, and checking received under part 142 toward the training, testing, and checking required by part 125.

Section 125.297 Approval of Flight Simulators and Flight Training Devices

The title of this section would be changed from "Approval of airplane simulators and other training devices" to the title indicated above. The terminology used in the new title is consistent with that used elsewhere in these proposed rules.

This section also would permit the performance of required checks in flight simulators and flight training devices used by training centers certificated under part 142.

Part 135

Section 135.1 Applicability

This section would be amended to be made applicable to (after 2 years from the effective date of part 142) part 142 certificate holders who, by contract or otherwise, train, check, or qualify air carrier personnel.

Section 135.291 Applicability

This section would be amended by adding a subparagraph (2) enabling training centers to provide the testing and checking requirements of subpart G.

Section 135.292 Training, Testing, and Checking Conducted by Training Centers: Special Rules

A new § 135.292 would be added to permit a crewmember who completes training, testing, or checking under part 142 to credit the completed training, testing, or checking toward that required by part 135.

Section 135.293 Initial and Recurrent Pilot Testing Requirements

This section would be revised to include the term "pilot evaluator", to facilitate the use of this position in training centers.

Section 135.297 Pilot in Command: Instrument Proficiency Check Requirements

This section would be revised to include reference to a training center pilot evaluator, as discussed in § 135.293.

Section 135.299 Pilot in Command: Line Checks: Routes and Airports

This section would be revised to include reference to a training center pilot evaluator, as discussed for the two previous sections.

Section 135.321 Applicability and Terms Used

This section would be revised to require part 135 certificate holders to obtain a part 142 certificate in order to train persons other than their own aircrew employees. However, a part 135 certificate holder operating under an exemption to provide training for crewmembers, aircraft dispatchers, or other personnel other than those employed by the certificate holder, would be given 2 years from the effective date of the amendment based on these proposed rules to obtain certification under proposed part 142. The basis for this proposed rule is discussed above under § 121.400.

Section 135.323 Training Program: General

This section would be revised to allow the use of a training center to accomplish the requirements of the training program.

Section 135.324 Training Program: Special Rules

A new paragraph would be added to this section to permit a certificate holder to use a training program conducted in accordance with an approved course conducted by a rated training center certificated under proposed part 142 to satisfy the training program requirements of Part 135 in order to prevent duplication of training facilities, recordkeeping, etc. The rationale is the same as discussed under § 121.402.

Section 135.325 Training Program and Revision: Initial and Final Approval

This section would be revised to allow a training center to begin training by contract or other arrangement upon initial approval of a training program for the air carrier certificate holder.

Section 135.327 Training Program: Curriculum

This section would be revised by adding a new subparagraph to provide that flight simulators and flight training devices used in a curriculum would have to be listed in each approved curriculum.

Part 141

Section 141.26 Training Agreements

This proposed new section would be added to permit training arrangements between pilot schools certificated under existing part 141 and training centers certificated under proposed part 142. This arrangement would provide a means for pilot schools to benefit from simulation training at certificated training centers, and would provide a means for training centers without aircraft to offer prospective students training programs that include aircraft flight time. A more detailed discussion is set forth below under § 142.33.

Part 142

Subpart A

Proposed part 142 would have a general subpart, subpart A, which sets

forth the proposed requirements necessary to obtain and maintain certification as a part 142 training center.

Section 142.1 Applicability

This section specifies the training to which part 142 applies and that to which it does not apply.

Section 142.3 Definitions

This proposed section defines terms used in part 142.

Section 142.5 Certificate and Training Specifications Required

This proposed section would provide that no person may operate a training center without a training center certificate and training specifications, as described by this proposed part. Paragraph (b) further provides that a training center certificate applicant would be issued a training center certificate and training specifications if the applicant complies with the applicable sections of proposed part 142.

Section 142.7 Duration of a Certificate

Under this proposed section, a training center certificate would have no expiration date, but it may be suspended, revoked, or otherwise terminated by the Administrator. Further, under paragraph (b) of this proposed section, a certificate holder would have to return its certificate to the Administrator if that certificate is suspended, revoked, or terminated. The FAA believes that these provisions are necessary to ensure compliance with part 142 requirements.

Section 142.9 Deviations or Waivers

This proposed section would establish deviation and waiver procedures. The FAA believes that provisions should be included to permit deviations from, and waivers of, part 142 rules under appropriate circumstances.

Section 142.11 Training Center Ratings

This proposed section would require that, in addition to a training center certificate, a training center certificate holder would have to obtain a rating to conduct each course of training. This proposed requirement is similar to requirements for part 141 Pilot Schools. Since each training course is unique and tailored to a specific need, the FAA believes that each course should be evaluated and rated separately.

Section 142.13 Application for Issuance or Amendment

Paragraph (a) of this proposed section would require that an application for a training center certificate would have to be made on a form and in a manner prescribed by the Administrator. The FAA believes that this proposed requirement is necessary in the interest of standardization and would expedite application processing. Paragraph (a)(3) proposes timeframes that have been found necessary for processing similar applications.

Paragraph (b) proposes that each application provide information about, but not limited to, each management position, facilities, recordkeeping, and curriculum of the proposed training center. The FAA has found that these items of information are necessary in order for it to properly evaluate the capabilities of proposed air agencies.

Proposed paragraph (c) would require that facilities actually be in place at the time of application, and not simply planned or expected. This proposed requirement is intended to preclude expenditure of FAA resources on frivolous or tentative plans that may never come to fruition due to changed business plans. It would also permit the FAA to evaluate actual facilities rather than those that are merely planned and subject to later change. The FAA believes that these proposals are necessary in order to conserve public resources and in order to maintain the highest standard of facilities in training centers.

Paragraph (d)(2) of this proposed section outlines the content of proposed training specifications. This is a new concept for training entities, but experience with similar "operating specifications" issued to air carrier certificate holders has shown that the procedure should allow maximum administrative convenience. The FAA believes that training specifications will be stored by training centers in an automated data base. If so, they can easily and rapidly be accessed for revision and review by the FAA when the center desires to add a new training program or amend an existing one.

Paragraph (e) proposes circumstances, such as the submission of inaccurate information, that could lead to the denial, suspension, or revocation of a training center certificate. The FAA believes that this proposed section is needed to ensure that training centers employ properly qualified persons and meet the standards for the certification and operation of training centers.

Proposed paragraph (f) would establish administrative procedures under which the Administrator might amend a training center certificate. Such an amendment may be necessary, for example, to add a satellite training center to a certificate.

Section 142.15 Management and Personnel Requirements

Under this proposed section, a training center would have to show that it has and maintains a sufficient number of qualified instructors, evaluators, and management personnel competent to perform required duties. The FAA needs this information, along with the other information required by this part, to approve applications for certification under part 142.

Section 142.17 Facilities

Paragraph (a) of this proposed section would require a training center applicant to establish and maintain facilities designed to accommodate the type of training, testing, and checking it plans to conduct. The proposed requirements for facilities are designed to ensure a high quality learning environment. Under § 142.17(b)(3) of the proposed rule, a training center would have to establish and maintain a principal business office that may not be shared with a part 121, 135, 141, or 142 certificate holder. The purpose of this proposal is to prevent co-mingling of records, facilities, students, and instructors. Co-mingling is considered undesirable because different standards apply to entities certificated under these several parts.

Under proposed § 142.17(c), the principal business office could not have a mailing address that is a post office box only. The FAA cannot properly evaluate the performance of entities that use a post office box as an address, but seem to have no geographically-fixed base of operations. The principal business office could be located outside the United States.

Under paragraph (b)(2) of § 142.17, records required by part 142 would have to be kept at the principal business office. This proposed rule would permit the FAA to locate and periodically review records in order to determine compliance with part 142 standards.

Training centers certificated under proposed part 142 would be permitted to provide ground instruction as well as training in flight simulators, flight training devices, and aircraft; however, in order to be certificated under proposed part 142, a training center would be required to own or lease at least one FAA-approved flight simulator. The FAA believes that flight training in aircraft and in flight training devices is adequately covered by Part 141 Pilot Schools and that the primary emphasis of part 142 training centers will be training with flight simulators. In order to ensure the availability of proper

equipment, therefore, the FAA believes that a training center should own, or have a lease for, at least one flight simulator. Under proposed § 142.17(e), a satellite training center could be located within or outside the United States; however, a satellite training center located outside the United States would have limited privileges, as described under § 142.20.

Section 142.19 Satellite Training Centers

Under proposed § 142.19(a), training centers would be permitted to establish satellite training centers. A satellite training center might be a geographically separate facility, and would not be required to have separate management personnel. Under proposed § 142.19(a)(1), however, a satellite training center would have to meet the facility, equipment, personnel, and course curriculum requirements of §§ 142.39 or 142.77, or both, of proposed part 142. The purpose of these proposed satellite centers is to facilitate the establishment of additional training centers in areas where a demand for them develops. These additional centers could be located within or outside the continental United States.

As proposed in § 142.19(a)(3), a satellite training center may provide training, testing, and checking in accordance with the training center certificate holder's training specifications, provided the FAA has been notified at least 60 calendar days prior to the proposed commencement of operations at the satellite training center. Sixty calendar days is considered the minimum time necessary to process the application for a certificate and for the training specifications.

Under proposed § 142.19 (a)(4) and (b), a training center certificate holder's training specifications would have to reflect the name and address of the satellite training center and the approved courses to be offered at the satellite training center, to allow FAA surveillance.

Section 142.20 Foreign Training Centers: Special Rules

Under proposed § 142.20(b), a satellite training center located outside the United States could issue United States pilot certificates to United States citizens only and could add ratings and endorsements to all pilot certificates issued by the FAA. For example, in proposed § 142.20(b), a person who is not a United States citizen, but who has an FAA-issued private pilot certificate with an airplane single-engine land rating, could add to that private pilot certificate an instrument rating, a multiengine rating, a single-engine or multiengine sea rating, or a rotorcraft rating. However, this proposed section would not permit that person to train or test for a commercial pilot certificate or an ATP certificate. The FAA believes that the above restriction is appropriate, since it would be improper for the FAA to award pilot certificates to citizens of another country within that country.

Section 142.21 Prohibited Drugs

A training center would be subject to the requirements of an anti-drug program, as described in appendix I to part 121, and the drug testing requirements associated with such a program. The proposed requirements are consistent with anti-drug regulations of other parts of the FAR that were developed in response to concerns about the degradation of safety that has been shown to be attendant to illicit drug use. In addition, a training center certificate holder that permits any aircraft owned or leased by it to be engaged in any operation that the certificate holder knows to be in violation of § 91.12 of the FAR, "Carriage of narcotic drugs, marijuana, and depressant or stimulant drugs or substances," could lose its certification.

Section 142.23 Testing for Prohibited Drugs

The purpose for this proposed section is the same as that discussed above under § 142.21.

Section 142.25 Refusal To Submit to a Drug Test

The comments under the summary for § 142.21 apply to this section.

Section 142.27 Display of Certificate

This proposed section would require a training center to prominently display its certificate and to make it available upon request by the FAA. The FAA believes that this is necessary to aid in compliance determination and enforcement action, if necessary.

Section 142.29 Inspections

This proposed section would require training centers to permit inspections by the FAA at reasonable times and places. The FAA believes that recurrent inspections and unannounced inspections are necessary to determine compliance with the FAR. These proposals are similar to inspection requirements applicable to other air agencies which are subject to FAA regulation.

Section 142.31 Advertising Limitations

This proposed section would restrict advertising to that training that has been approved by the Administrator. Paragraph (b) would require a training center to promptly and totally cease advertising after surrender, suspension, revocation, or termination of its certificate. The FAA believes that these requirements are necessary to help ensure that only the highest quality of training is offered to the aviation community.

Section 142.33 Training Agreements

This proposed section would permit training centers to establish training agreements with pilot schools certificated under part 141. A pilot school certificated under part 141 would be allowed to contract with a training center certificated under proposed part 142 for an entire course or for a block of ground or flight training. The course of instruction for which the school contracts, however, would have to be an approved course of training identified in the training center's training specifications. The pilot school's training course outline (TCO) would have to reflect training conducted at the pilot school, contain an outline of the block of training conducted at the training center, and include the name, address, and certificate number of the training center that conducted the training. These proposed requirements would allow the FAA to determine that all required areas of instruction were covered by either the pilot school or the training center. Curricula for such a course would fall under § 141.57, Special Curricula, and would be approved under that section like other curricula.

A training center certificated under proposed part 142 would also be allowed to contract with a pilot school certificated under part 141 for an entire course or only part of a course; however, a training center would not be permitted to contract with a pilot school certificated under part 141 for training or testing required by part 121 or part 135. Pilot schools cannot now conduct training or testing for air carriers certificated under part 135 or part 121 either under the FAR or by exemption.

If a training center desired to contract with a pilot school for a particular course or block of training, the pilot school would be required to have authorization under part 141 to provide the type of training, testing, or checking requested. For example, under proposed § 142.33(c), if a certificated training center wanted a certificated pilot school to provide a ground school course, the

pilot school would have to have a flight ground school course rating and an approved TCO to provide the type of training requested. Under proposed § 142.33(b), if the training were a block of aircraft time required for private pilot certification, the pilot school would be required to have either a part 141 private pilot certification course rating or a private pilot test course rating.

Before a training center certificated under proposed part 142 could contract with a pilot school certificated under part 141 for a block of training, the entire course curriculum, including the contracted block of training, would have to be approved under proposed part 142. In addition, under proposed § 142.33(b) the training center certificate holder's training specifications would have to be amended to reflect the contracted block of training as well as the name, address, and certificate number of the pilot school that would administer the training. The FAA believes these measures are necessary to allow monitoring and quality control and to facilitate compliance determination.

Under proposed § 142.33(d), after completion of a contracted block of training, the pilot school that provides the training would keep a copy of the student's training record and forward a copy to the training center that contracted for the training.

Subpart B

Proposed Subpart B, "Aircrew Curriculum, Training Course Outline, and Syllabus (other than air carrier)," proposes curriculum, course outline, and syllabus requirements for those training center applicants and certificate holders planning to offer training to persons other than aircrew employees of an air carrier or an aircrew employee of a part 125 certificate holder.

Section 142.35 Applicability

This proposed section would specify that the training programs proposed by this subpart would apply to that segment of aviation frequently called "general aviation" that operates under part 91, and that is not required by regulation to have a training program.

Section 142.37 Approval of Flight Aircrew Training Program

Paragraphs (a) and (b) of this section would provide that each applicant for training program approval would be required to file an application with the FAA Flight Standards District Office that has jurisdiction over the area in which the applicant's principal business office will be located.

Proposed § 142.37(c) would require the applicant to submit a training program identifying segments that are core training programs and speciality training programs. Core training programs and speciality training programs are defined in proposed § 142.3. Core training programs would be forwarded to the central national office for approval. Specialty training programs would be forwarded to the FAA inspector with primary responsibility for training surveillance at the center at which the specialty training is to occur. Because specialty training programs are designed to consider local factors, such as geography and climate, these programs could be conducted only at the center for which the specialty training program is approved. Core courses approved at the national levels, however, would be approved for use by the training center certificate holder at any of its training centers and its satellite training centers. The FAA believes that this procedure would provide maximum standardization of training.

Proposed § 142.37(c) would require applicants, when filing an application for training program approval, to indicate which FAR requirements the training program curriculum would satisfy and which FAR requirements the training program curriculum would not satisfy.

Proposed § 142.37(e) would require that a certificate holder make revisions to its approval training program upon request by the Administrator. Revisions may be necessary when, upon review of a curriculum, the FAA discovers a deficiency in it. If a certificate holder fails to make necessary revisions upon request, the Administrator could suspend, revoke, or terminate its certificate.

Section 142.39 Training Program Curriculum Requirements

Each training program curriculum submitted for approval would have to contain a syllabus and course outline, minimum flight training equipment requirements, and minimum instructor and evaluator qualifications for each proposed course of training. The FAA believes that approval of a curriculum under SFAR 58, Advanced Qualification Program (AQP), should, for that applicant, constitute complete approval of that curriculum for use by a training center certificated under part 142, since the AQP application contains curriculum criteria at least as detailed as the part 142 curriculum requirements set forth in proposed §§ 142.39 and 142.77.

Proposed § 142.39(a)(4) would require that each training program contain initial qualification and continuing qualification curriculum for each instructor or evaluator employed to instruct in a proposed course of training.

Paragraph (a)(4) would require training centers to issue annually a letter of authorization to each instructor for each course that instructor would teach. These proposed revisions should ensure that instructors and evaluators retain necessary skills.

Many of the proposed requirements for a training center are derived from years of experience with approved training programs for "de facto" training centers, and training programs that included flight simulator use in accordance with subpart N and appendix H of part 121. Because that experience has shown that there is a greater efficacy in structured training using high fidelity simulation than in traditional airplane-only training, proposed § 142.39(a)(5) would allow a further reduction of the applicable flight experience requirements of part 61 or part 141 based on demonstrated performance of graduates.

A training center seeking approval to train toward, or test for, a certificate or rating in fewer than the minimum hours prescribed in part 61 for that certificate or rating would be required to demonstrate the ability to accomplish such training in fewer hours than prescribed. In addition, the training center or training center applicant would have to propose a method of tracking students and collecting data to validate the effectiveness of its training for the certificate or rating under its proposed program. Data to be tracked to point to program effectiveness might include incidents, accidents, hours flown, and type of flying. The proposal would require such tracking for 1 year, or other period approved by the Administrator, following course completion. The basis for these proposed rules is discussed above under § 121.109(i).

Subpart C

Subpart C "Personnel and Flight Training Equipment Requirements (other than air carrier)," of proposed part 142 would establish instructor and evaluator eligibility requirements, address instructor and evaluator privileges and limitations, and address instructor and evaluator training, testing, and qualification for training programs approved under Subpart B. This subpart also prescribes the rules governing flight training equipment requirements.

Section 142.45 Applicability

This proposed section indicates that proposed Subpart C sets forth the personnel and equipment requirements

required for training that is applied toward the requirements of part 61.

Section 142.47 Training Center Instructor Eligibility Requirements

Proposed § 142.47(a)(1) would set the minimum age for training center instructors at 18, which is consistent with the minimum age currently required for a commercial certificate. Proposed § 142.47(a)(2) would require that, to be eligible to instruct at a training center, an instructor would have to be able to read, write, and converse fluently in English. This standard of English language proficiency has been required for airline transport pilots and flight instructors for years, and experience has shown that the complexities of the airspace rules and air traffic environment demand this standard of language proficiency. English is the international language in aviation, and training courses must be taught in English so commonly used terminology is understood.

To permit the maximum number of potential instructors, the FAA proposes in § 142.47(a)(3) that all training center instructors would have to meet one of the following standards: (1) Hold a flight instructor certificate and at least a commercial pilot certificate with an instrument rating; (2) at the time of accepting employment, be currently qualified to instruct under SFAR 58, part 121 or part 135; or (3) hold a ground instructor certificate with instrument rating and meet at least the commercial pilot aeronautical experience requirements. Under exemptions previously issued, the FAA has required that simulator flight instructors meet these standards. Since the training provided under these exemptions has proven effective, these standards have been included in this proposed section.

Experience with numerous simulator training centers over several years has shown the present instructor cadre to be effective. Therefore, the FAA proposes in § 142.47(b) that an instructor who has been employed as a simulator instructor by a training facility operating under an exemption to part 61 (prior to the date of the amendment based on this NPPM) may continue to instruct for that training facility provided the facility obtains certification under proposed part 142, the instructor maintains continuous employment with the training center, and the instructor instructs only in flight simulators in which that instructor has previously been authorized to instruct.

The FAA recognizes that there are a number of highly experienced persons who might be potential training center instructors, including former military pilots who never gained an FAA flight instructor certificate, and former air carrier pilots beyond the maximum age to continue in that capacity. Some of these persons may be unable to hold an airman medical certificate, which the FAR currently requires for instructors. Accordingly, under this proposed section, a training center may employ a person as a training center instructor if that person: (1) Holds a ground instructor certificate with an instrument rating, and (2) has at least the aeronautical experience certification requirements for a commercial certificate (ATP experience requirements in some cases).

Section 142.49 Training Center Instructor Privileges and Limitations

To instruct in an aircraft, a training center instructor would have to hold a current flight instructor certificate with certificates and ratings applicable to the aircraft used for instruction, hold at least a valid second class medical certificate, and meet the recency of experience requirements of part 61. These proposed requirements for aircraft flight instructors are those currently required by part 61. The FAA believes that the current requirements for aircraft flight instructors are necessary to ensure that an instructor is qualified to properly teach required course curricula.

Section 142.51 Qualifications to Instruct in a Flight Simulator or a Flight Training Device

Under this proposed section, to instruct in a flight simulator or flight training device that represents an airplane an instructor would have to meet at least the aeronautical experience requirements of § 61.129 that must be met by the applicant for a commercial pilot certificate with an airplane rating, except for the required hours of instruction for the practical test. Further, each instructor who instructs in a flight simulator or flight training device that represents an airplane requiring a type rating, or in a course of training leading to the issuance of an airline transport certificate with an airplane category rating (or the addition of an airplane category rating to an existing airline transport certificate), would have to meet the ATP aeronautical experience requirements of § 61.155. Training center instructors would have to meet similar aeronautical experience requirements in helicopters in order to instruct in a flight simulator or in a flight training device that represents a helicopter.

Section 142.53 Training Center Instructor Training and Testing Requirements

The importance of the instructor's role in providing quality training has been highlighted by a number of national inspection programs in recent years. This point has been emphasized in reports of the General Aviation Safety Audit (Unnumbered, Flight Standards Service internal audit), and most recently in the National Aviation Safety Inspection Program (FAA Order 8000.270). Various National Transportation Safety Board and National Airspace Review recommendations also reference the need for increased instruction of instructors. Simulator training exemptions for several years have required initial and recurrent instructor training, and the performance of instructors in training centers operating under exemption has been satisfactory. Section 142.53 proposes that all training center instructors would be required to successfully complete initial and annual recurrent training in specific areas. The basis for this requirement is discussed above under § 142.39.

Section 142.55 Training Center Evaluator Requirements

Paragraph (a) of this proposed section sets forth the proposed requirements for an evaluator, including recurrent training requirements that would have to be met within each 12-month period. An evaluator is a person who would perform tests for certificates and ratings authorized by the training center certificate holder's training specifications.

Many years of experience in evaluating training in air carrier training programs, pilot schools, and de facto simulator training centers have shown that evaluators must be proficient in all areas required of an instructor. In addition, an evaluator must have the special skills required to evaluate. Therefore, § 142.55 proposes that training center evaluators be subject to the same eligibility, qualification, authorization, and initial and recurrent training and testing requirements as proposed for training center instructors in §§ 142.47, 142.49, 142.51, and 142.53. In addition to other required subjects, § 142.55(a)(3) proposes that training center evaluators would have to successfully complete additional training unique to pilot evaluator duties. The FAA has found these subjects to be necessary and adequate to prepare evaluators and keep them current in evaluation skills and techniques.

Section 142.55(b) would allow evaluators to complete recurrent training requirements within a 60-day window, without changing the next due date. This practice allows maximum convenience in scheduling training.

Section 142.57 Aircraft Requirements

Proposed paragraph (a) of this section would require training center aircraft used for instruction to be civil aircraft of the United States if used in the United States, and would allow satellite training centers located outside the country to use aircraft registered in the host country. Paragraph (a)(3) proposes airworthiness requirements for training centers within and outside of the United States. The FAA believes that these proposed registration and airworthiness requirements satisfy international aviation agreements and will ensure a reasonable standard of safety for training aircraft.

Proposed paragraph (a)(4) would require that training centers maintain and inspect training aircraft in accordance with the requirements of Subpart E of part 91 and an approved program. Paragraphs (a)(5) and (6) propose that all aircraft used for instrument instruction be equipped and maintained for IFR operations, and in accordance with the requirements of the approved training program.

Under proposed in § 142.57(b), aircraft used for instruction would have to be at least a two-place aircraft with flight controls that are easily reached by both pilots and that operate in a conventional manner. Based on its experience with flight tests required by § 61.45, the FAA believes that these proposed requirements generally are necessary to ensure safety during in-flight instruction. However, in recognition that certain uniquely configured aircraft can be safely operated with flight controls that do not meet the above standards, paragraph (c) of this proposed section would permit a training center to authorize the use of such aircraft upon a finding that flight instruction can be safely conducted in them.

Section 142.59 Flight Simulators and Flight Training Devices

Under proposed § 142.59(a), flight simulators and flight training devices used in an approved training program would have to be qualified by the National Simulator Program Manager (NSPM). Simulation has benefit only if behaviors learned can be transferred to the aircraft. No effective transfer of learning has been demonstrated except from flight simulators and flight training devices that accurately replicate the performance of an aircraft. The FAA determines accurate replication of an aircraft by evaluation and qualification of flight simulators and flight training devices by its NSPM. Therefore, flight simulators and flight training devices used in proposed part 142 training centers would be subject to qualification by the NSPM.

Paragraph (a) of this section also would require that a flight simulator or flight training device be approved for use in a training center training program curriculum. Approval is separate from evaluation and qualification by the NSPM. Approval for simulation use in a specific training program is a requirement now for all aircrew training programs subject to FAA approval.

Under proposed § 142.59 (a)(1), a training center certificate holder would have to ensure that the flight simulators and flight training devices the certificate holder plans to use for a particular maneuver or procedure are qualified for that maneuver or procedure. If part 61, for example, requires landing in a particular make, model, and series aircraft, then a flight simulator used to simulate that aircraft would have to be qualified and approved both for the visual landing and to simulate the make, model, and series of aircraft.

Proposed § 142.59(c)(1) would require that flight simulators and flight training dices used by training centers be maintained to ensure the reliability of the performances, functions, and all other characteristics that were required for initial qualification of the equipment.

Proposed § 142.59(c)(2) would require that flight training devices and flight simulators be modified to conform with any modification to the aircraft being simulated, if that modification results in changes to performance, function, or other characteristics of the aircraft.

Proposed § 142.59(c)(3) would require that flight simulators and flight training devices used under proposed part 142 be given a functional check before being used. Further, this paragraph would require that training center instructors would have to keep a discrepancy log, and enter all discrepancies in that log at the end of each training session or check. The FAA believes that these measures are necessary to enable it to determine compliance with the approved simulator component inoperative guide (SCIG) discussed in the next paragraph.

Proposed § 142.59(d) would provide that, unless otherwise authorized by the Administrator in a SCIG, all components on a flight simulator or flight training device used by a training center would have to be operative to insure faithful replication of aircraft capabilities. A flight simulator or flight training device SCIG is a guide approved by the Administrator that indicates the specific training or testing tasks that are authorized if a component becomes inoperative. The use of a flight simulator or flight training device with one or more inoperative components may be limited by the principal operations inspector (POI), on a case-by-case basis. The POI would not authorize maneuvers or procedures that involve the use of an inoperative component; however, he or she may allow the use of the simulator for other maneuvers and procedures for which it has been previously qualified and approved.

The authorization to use the simulator with an inoperative component would be valid for a period not to exceed 4 months unless an extension is approved by both the POI and the NSPM. Four months is the maximum period currently permitted under training programs using flight simulators, and it is the period of time established for reoccurring evaluation and qualification of each simulator and advanced training device. Experience has shown that 4 months is sufficient time to repair or replace an inoperative component of a simulator.

Proposed § 142.59(e) would allow training centers to use flight simulators in approved courses without specific route or terminal aids and visual scenes. The FAA believes that the use of specific route and terminal aids and visual scenes has not been shown to have a significant advantage over the use of selected or generic route and terminal aids and visual scenes.

To facilitate compliance with this proposed section, § 142.59(f) would allow a training center to request evaluation and qualification of a flight simulator or flight training device without having an air carrier certificate or any special relationship with an air carrier. Currently, the only entity specified in the FAR that may request flight simulator evaluation is an air carrier certificate holder.

Subpart D

Subpart D, "Operating Rules (other than air carriers)," of proposed part 142 sets forth proposed operating rules for training centers that would provide training in accordance with Subpart B of proposed part 142.

Section 142.61 Applicability

This section provides that the operating rules proposed in this subpart would apply to training centers providing training to clients other than air carrier clients.

Section 142.63 Privileges

Proposed § 142.63 would permit training center instructors and evaluators who provide training in flight simulators and flight training devices to use flight simulators and flight training devices only to accomplish recency of experience requirements. Simulator training exemptions allowed this alternative for maintaining recency of experience on a trial basis, and the FAA found this practice to be acceptable.

Section 142.65 Limitations

Because the FAA intends that flight simulators used in testing, checking, or line-oriented flight training (LOFT) provide the same time constraints and sequential, or overlapping, circumstances that occur in an actual aircraft, § 142.65 would prohibit the use of flight simulator or flight training device repositioning, freeze, or slow motion features during testing, checking, and LOFT.

Additionally, proposed § 142.65(b)(1) would require a crewmember qualified in the aircraft category, class, and type, if a type rating is required, to occupy each crewmember position during testing, checking, or LOFT. During Category II and Category III testing, the copilot position would have to be occupied by a pilot qualified to perform the duties of a second in command for Category II or Category III operations, as applicable. The FAA believes that this proposed requirement is necessary because these operations are essentially crew tasks, and the capability of a lone pilot cannot be determined accurately without a complete crew. An unqualified substitute copilot, or a simulator instructor filling the role of both instructor/simulator operator and copilot is not believed to be adequate.

Notwithstanding the general proposed prohibition against the use of unqualified crewmembers, proposed § 142.65(b)(2) would permit a student enrolled in a specific training course to occupy a required crewmember position for training, checking, or testing conducted in a particular training course without holding the pilot certificates and rating necessary to qualify for that crewmember position. This provision is proposed in order to allow crews undergoing training as a crew to more fully benefit from crew coordination and training and crew management. Experience learned from exemptions and from air carrier training programs has shown this practice to be beneficial.

Proposed § 142.65(d) would prohibit training center certificate holders from recommending a trainee for a certificate or rating unless that trainee has satisfactorily completed the training specified in an approved course of training and has passed the required final tests. Training center certificate holders would also be prohibited from graduating a student from a course of training unless the student has satisfactorily completed the curriculum requirements of that course. The FAA believes that completion of all training curriculum is required to ensure safety.

Proposed § 142.65(c) would allow students to transfer from a pilot school certificated under part 141 to a training center certificated under proposed part 142, and be given aeronautical experience credit for all training successfully completed at the part 141 pilot school. Placement within a particular program, however, would be based upon a student's demonstration of aeronautical knowledge and skill. An authorized evaluator, as defined in part 142, would assess the aeronautical knowledge and skill of students transferring from a pilot school to a training center and would make a subjective judgement about the amount of aeronautical experience to credit and about where a transferring student should be placed in a particular program. Transfers of training center students to or from a pilot school would require that a copy of each student's training records be transferred to the gaining institution to become part of the student's training records.

Subpart E

Subpart E "Recordkeeping (other than air carrier and part 125) would prescribe the records that a training center certificate holder would have to maintain.

Section 142.71 Applicability

Subpart E, "Recordkeeping (other than air carrier)," prescribes the records that a training center certificate holder would have to maintain for students who are not aircrew employees of operators under parts 121, 125, or 135, and the records that would have to be maintained for instructors and evaluators authorized in accordance with subpart C of proposed part 142.

Section 142.73 Recordkeeping Requirements

A training record would have to be maintained for each student. Among other things, student records would be required to contain the name of the student, a copy of the student's pilot certificate and medical certificate, the name of the approved course attended by the student, and, if applicable, the type of flight simulator or flight training device used in that approved course. In addition, the training center would have to keep a record of the student's aeronautical experience, the amount of time it takes the student to complete the approved course of training, the student's performance on each lesson, and the name of the instructor who provided the training. The center also would have to keep a record of the date of each end-of-course practical test, the name of the evaluator who conducted the test, the result of that practical test, and a record of any additional training required. Student records would have to be maintained for 1 year, or other period as approved by the Administrator.

Proposed § 142.73(b) would require that, for each instructor or evaluator employed to instruct or evaluate an approved course of training, each center would have to keep records that demonstrate compliance with the instructor and evaluator eligibility, qualification, and recurrent training requirements of subpart C of proposed part 142. The FAA believes that this section proposes minimum records that it will need to properly evaluate the performance of students, instructors, and others. This information will facilitate necessary changes in a number of areas, including curriculum, equipment, and facilities.

Subparts F Through I

Subparts F through I of proposed part 142 contain the rules governing training, testing, or checking that a training center would have to meet to satisfy the requirements of parts 63, 121, 125, and 135 of the FAR.

Subpart F

Subpart F, "Aircrew Curriculum, Training Course Outline and Syllabus (Air carrier)," proposes curriculum and course outline requirements for the issuance of a training center certificate and rating for training conducted to meet the requirements of parts 63, 121, 125, and 135. The training program curriculum requirements and approval process contained in subpart F of proposed part 142 is basically the same as that contained in subpart B because of commonality in general aviation and air carrier training needs.

Section 142.75 Applicability

This section provides that proposed subpart F prescribes the curriculum and course outline requirements for a training center certificate and ratings for training to meet the requirements of part 63, part 121, part 125, or part 135.

Section 142.77 Approval of Flight Aircrew Training Program

Except as indicated below, the discussion under proposed § 142.37 applies to this proposed section.

Under proposed § 142.77(c) (2) and (3), if a holder of a certificate under one of the above parts plans to train aircrews other than its own employees, the certificate holder would have to file an application for training center training program approval under subpart F. The application would have to indicate which requirements of part 61, part 63, part 121, part 125, or part 135, as applicable, the part 142 training program curriculum would satisfy and which requirements it would not satisfy. If the certificate holder plans to train persons not subject to part 121, 125, or 135, it would apply as discussed above under subpart B.

Section 142.79 Approval of Training, Qualification, or Evaluation by a Training Center

Under proposed § 142.79(b), an air carrier certificate holder not wishing to become a training center, but wishing to use the services of a training center, would be allowed to contract with an appropriately rated training center for training. An air carrier certificate holder would be allowed to contract for an entire part 121 or part 135 curriculum, a curriculum segment, or a portion of a curriculum.

Subpart N of part 121 requires an air carrier subject to that part to have a training program for its employees subject to that part. The FAA proposes that all training provided to air carriers by trainers, other than an air carrier training its own aircrew employees pursuant to subpart N, be provided by an approved training center. The basis for this proposal is set forth above under the discussion pertaining to part 121.

Under proposed § 142.79(b), a training center certificate holder offering a course designed to meet the pilot training, checking, and testing requirements of part 121, part 125, or part 135 would have to ensure that the part 125 operator or air carrier certificate holder that has contracted for training has notified its POI of its intent to use a training program curriculum or training course approved under part 142. The notification would be required in writing at least 30 calendar days before contracted training is scheduled to begin.

Under this proposed section, training centers could contract to present programs from a list of approved courses in the training center's approved training curriculum. Those courses would have to appear in the training center's training specifications.

Paragraph (b)(1) of this proposed section would require that the training center facilities used to meet the requirements of part 121, 125, or 135 must be approved by the Administrator for planned training, qualification, or evaluation required by part 121, part 125, or part 135. This proposed requirement would allow the FAA to provide necessary monitoring and quality control.

Proposed § 142.79(b)(1)(ii) would require a training center to have FAA approval to use a training program curriculum or a training course for a particular air carrier or part 125 operator.

Proposed paragraph (c) would permit the Administrator to require modification of training programs to insure that the training provided to an air carrier certificate holder or part 125 operator continues to meet that client's needs. The proposed authority to require modification of training programs from time to time, if needed, is similar to the Administrator's authority in connection with other approved training programs.

Subpart G

Subpart G "Personnel and Flight Training Equipment Requirements (air carrier and part 125)" proposes the personnel and flight training equipment requirements for training center certificate holders.

Section 142.83 Applicability

This section would prescribe the personnel and flight training requirements for training center certificate holders engaged in training for a part 121 or part 135 certificate holder or a part 125 operator.

Section 142.85 Training Center Instructor Eligibility Requirements

The proposals set forth in this section are similar to those of proposed § 142.47.

Section 142.87 Training Center Instructor Privileges and Limitations

The proposals set forth in this section are similar to those of proposed § 142.49. Under proposed § 142.87(c)(4)(iv), however, a training center instructor could meet the requirements of § 121.411 or § 135.339, as applicable, as an alternative to having to meet the proposed requirements of subpart C, in order to provide training in an aircraft. This alternative would continue the practice of using instructors qualified under § 121.411 or § 135.339 to instruct in air carrier training programs.

Proposed § 142.87(c)(5) would require an instructor to hold the airman certificate and ratings required to serve as a pilot in command or a flight engineer, as applicable to the instruction to be provided, in the type aircraft in which he or she will instruct. In addition, an instructor would have to have completed an initial, transition, recurrent, or differences flight training course, as applicable, within the preceding 12 months.

Proposed § 142.87(c)(5)(v) would require the training center to notify an air carrier certificate holder's POI that an instructor is employed to provide instruction for the air carrier.

Section 142.89 Training Center Instructor Training and Testing Requirements

The proposals contained in this section are similar to those contained in § 142.53.

Section 142.91 Qualifications To Instruct in a Flight Simulator or in a Flight Training Device

The proposals contained in this section are similar to those contained in § 142.51.

Section 142.93 Training Center Evaluator Requirements

The proposals contained in this section are similar to those contained in proposed § 142.55.

Section 142.95 Aircraft Requirements

The proposals contained in this section are similar to those contained in proposed § 142.57, except that the discussion regarding flight controls (those that are easily reached and that operate in a conventional manner) does not apply to this proposed section.

Section 142.97 Flight Simulators and Flight Training Devices

The proposals contained in this section are similar to those contained in § 142.59.

Subpart H

Subpart H, "Operating Rules (Air Carrier)," prescribes the proposed operating rules applicable to training centers certificated under part 142 that provide training to air carrier clients in accordance with subpart F of that part. This subpart proposes the same operating rules as discussed above under subpart D.

Section 142.101 Applicability

This section provides that subpart H prescribes the operating rules for training centers providing training to air carrier clients under proposed subpart F.

Section 142.103 Privileges

The proposed privileges outlined in this section are essentially the same as those discussed under § 142.63.

Section 142.105 Limitations

The proposed limitations outlined in this section are essentially the same as those discussed under § 142.65, except that provisions for student transfers between training centers and pilot schools would not apply to training programs conducted for air carrier clients.

Subpart I

Subpart I, "Recordkeeping (Air Carrier)," proposes the requirements for records a training center certificate holder would have to maintain for clients operating under part 121, part 125, or part 135, and the records that would have to be maintained for instructors and evaluators authorized in accordance with subpart G of proposed part 142.

Section 142.111 Applicability

This section provides that subpart I (Recordkeeping) is applicable to training centers providing training to air carrier clients.

Section 142.113 Recordkeeping Requirements

Section 142.113 proposes that a certificate holder would have to keep a record for each student. Training records would have to contain the name of the individual student and the student's employer, the date of training, the results of all training and any tests undertaken by the student, the name of the approved course attended by the student, and, if applicable, the type of flight simulator or flight training device used in that approved course.

Proposed § 142.113 also would require that records be kept for each instructor or evaluator employed to instruct or evaluate an approved course of training. These records would have to demonstrate compliance with the instructor and evaluator eligibility, qualification, and recurrent training requirements of subpart F of proposed part 142.

Section 142.114 Record of Training Recipients

Proposed § 142.114 would require a training center that provides training for air carrier certificates to keep a list of all carriers for whom it conducts, or has conducted within the last year, training, checking, or testing. The list would have to include the name of the air carrier certificate holder and the courses and types of tests or checks accomplished for that certificate holder. A copy of this list would have to be forwarded to the Flight Standards District Office that has jurisdiction over the area in which the training center's principal business office is located and to the POI for the training center facility that provides the training for an air carrier.

Subpart J

Subpart J, "Other Approved Courses" proposes that training centers or training center applicants (other than pilot crew members) may apply for approval to conduct courses and that such courses would be approved by the Administrator upon a finding that the application provides a curriculum that is equal to, or better than, that required by the applicable part of the FAR.

Section 142.115 Conduct of Other Approved Courses

The primary emphasis of proposed part 142 is expected to be flight training, although the regulatory structure is intended to be flexible enough to permit a certificate holder or certificate applicant to provide training in other areas such as cockpit resource management, carriage and handling of hazardous materials, and instruction relating to job functions such as flight engineer, flight attendant, dispatcher, and ramp agent.

Paperwork Reduction Act

The reporting and recordkeeping requirements associated with this rule are being submitted to the Office of Management and Budget for approval in accordance with 44 U.S.C. chapter 35 under DOT NO: *new;* OMB NO: *new;* Title: *Aircraft Flight Simulator Use in Pilot Training, Testing, and Checking and at Training Centers;* Need for Information: *To adhere to the requirements for records that would need to be generated and maintained under proposed part 142.* Proposed use of Information: *To provide surveillance capability over proposed training centers to insure compliance with airman training, testing, and certification requirements.* Frequency: *Records would have to be kept of the training center initial application, of each student, of each instructor or evaluator, and of all air carrier certificate holder clients. These records would have to be annotated subsequent to any training, testing or checking.* Burden Estimate: *$45k for total annual burden;* Respondents: *Part 142 certificate holders and certificate holder applicants;* Form(s): *to be determined;* Average Burden Hours per Respondent: *The FAA estimates that there will be 32 certificate applicants during the first year. The average burden hours are estimated as follows:*

(1) To file an application—50 hours per application.

(1) To maintain a record for each student and provide that record once per student—1 hour per record.

(2) To maintain a record for each instructor and evaluator and provide that record once per instructor or evaluator, excluding the initial certificate application—1 hour per record.

(3) To provide a record to each POI for each course being instructed and the instructor's name—.25 hour per record.

For further information contact: The Information Requirements Division, M–34, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington DC 20590, (202) 366–4735 or Edward Clarke or Wayne Brough, Office of Management and Budget, New Executive Office Building, room 3228, Washington, DC 20503, (202) 395–7340.

Regulatory Evaluation Summary

The FAA has conducted a detailed regulatory evaluation of the proposed amendments. A copy of that evaluation has been filed in the regulatory docket of the NPRM. The FAA has evaluated the benefits and costs of the proposed regulatory changes and has concluded that the proposed amendments will not have a significant economic impact on the affected parties. The proposal would establish part 142 training centers at which flight simulators and flight training devices could be used, but it would not require the use of flight simulators or flight training devices in the training, testing, and checking of aircrew members.

Commenters are encouraged to respond to this assessment and to submit economic and trade data supporting any beneficial or adverse impacts that might occur if the proposed amendments are adopted. In addition, the FAA solicits recommendations for better methods of achieving the objective of the rule and rule changes in this NPRM.

Costs and Benefits

Organizations that currently provide training, testing, and checking in flight simulators and flight training devices are expected to incur costs in qualifying and applying for a part 142 certificate. The government could incur additional costs by creating a branch to accomplish the initial certification of proposed part 142 training centers, and to provide surveillance of training centers.

A number of provisions of the NPRM are not expected to create costs. These

items principally integrate the proposal into existing regulations or update existing regulations. A list of these provisions is found in the regulatory docket of this NPRM.

The proposed part 142 rule is expected to create several monetary and non-monetary benefits.

Costs

Estimated costs would include the cost for exemption holders to qualify and apply for the proposed part 142 certificate, and the cost for the government to establish and maintain a nationally centralized office to approve training centers, certificate applicants, training specification, and training programs. Holders of exemptions from part 61 requirements are expected to incur a one-time cost of approximately $8,000 each, or a total of approximately $200,000, to apply and qualify for the proposed part 142 certificate. The estimated annual cost for the government to establish and maintain a training center nationally centralized office is $537,600.

As with any other certificate issued by the FAA, organizations would incur costs in qualifying and applying for the certificate. If the proposal is adopted as proposed, organizations that hold exemptions from part 61 requirements to allow simulator use, aircraft manufacturers providing aircrew training, and air carriers training other than their own pilot aircrew employees would be required to apply for the proposed part 142 certificate in order to continue such operations. Other organizations would not need to apply for the proposed part 142 certificate; therefore, they are not considered in the FAA's cost estimates.

Because the proposed requirements for a part 142 certificate are similar to the current requirements for holders of exemptions from part 61 simulator requirements, organizations that hold such exemptions are expected to incur only limited costs in qualifying for the proposed part 142 certification. Currently, these organizations are required to have a training program curriculum, a recordkeeping system, facilities, and a system for training, testing, and checking instructors. (Any assumption that a cost or no cost would be incurred does not consider the expansion of a course that is currently approved under exemption.)

Costs incurred in qualifying for the proposed part 142 certificate would stem from adjusting instructor training and establishing evaluator requirements. Exemption holders would be required to do two things: (1) Amend their instructor training and testing requirements to include cockpit resource management in required ground training; and (2) ensure that each instructor has completed ground and flight instruction in normal and abnormal situations, including training in emergency situations likely to develop in training.

The FAA estimates that adjustments to the instructor training program would require 16 hours from two flight employees and 8 hours from one clerical support employee. With an estimate of $65 per hour in salary and benefits for the two flight employees, $10 per hour in salary and benefits for the clerical support employee, and $80 in miscellaneous costs, the FAA expects that the total one-time cost of adjusting instructor training requirements would be approximately $2,200 per organization. With a total of 32 exemption holders, the total cost would be approximately $70,400. The FAA estimates that any present evaluator training program would need to be revised. The FAA estimates that such revisions would require 32 hours from two high-level flight employees and 32 hours from one clerical support employee. By applying the same salary and benefit rates, plus $200 in miscellaneous costs, the FAA estimates that the one-time cost to revise evaluator training requirements would be $4,700 per organization, with a total cost of $150,400.

Part 121 or part 135 certificate holders are required to establish and maintain an approved training program for crewmembers, check airmen, instructors, and other operations personnel they employ. This training program could also be approved under SFAR 58. The current regulations permit these operators to use flight simulators and flight training devices for training, testing, and checking, and many of the requirements in proposed part 142 parallel current requirements in part 121 or part 135 as well as in SFAR 58. Under the proposal, a part 121 or part 135 certificate holder would be required to obtain a part 142 certificate to implement and maintain a training program for crewmembers, check airmen, instructors, and other operations personnel other than those they employ. Such a training program is permitted under SFAR 58. The FAA estimates that, at this time, few operators train personnel they do not employ. If a part 121 or part 135 operator desires to train crewmembers, check airmen, instructors, and other flight personnel they do not employ, the cost to obtain the proposed part 142 certificate could be conveyed to the operator's customer(s).

The costs incurred in applying for a part 142 certificate would include the administrative cost of application. This cost would include the development of the training specifications and the composition of the actual application. Because an operator would obtain the proposed part 142 certificate over a 2-year period after adoption of the proposal, the cost to adjust advertising and other business expenses (new letterhead, business cards, etc.) is not included. Such modifications could be made as new items are required.

The FAA estimates that completing the necessary adjustments and developing the necessary documents would require 8 hours from two flight employees and one clerical support employee. With the same salary and benefit estimates discussed above, plus $100 in miscellaneous costs, the FAA estimates that the total one-time cost for the holder of a part 61 exemption to apply for the proposed part 142 certificate would be approximately $1,200. If organizations that currently hold part 61 exemptions apply for part 142 certificates, the one-time cost to the industry would be approximately $38,400.

Under the proposal, a central office would approve applications and alterations to the proposed part 142 certificate. This central office might be established in conjunction with an existing central office that has oversight responsibility for another aircrew training program. The FAA estimates that the central office would include one manager, five assistants, and one secretary. The FAA estimates that each assistant would travel approximately 30 days per year. Based on government salary and benefit rates, the annual cost of this branch is estimated to be approximately $537,600. Any costs for FAA publications and advisory material would be considered part of the FAA's periodic update of the regulations.

Benefits

The removal of regulatory constraints could advance the development of flight simulator technology, especially in general aviation. In addition to potential safety benefits, the removal of regulatory constraints would provide numerous benefits to the general public, students, training institutions, aircraft manufacturers, and operators of aircraft for hire, and it would stimulate the development and manufacture of flight simulators and flight training devices.

Exemptions permitting the use of flight simulators to meet the requirements of part 61 in lieu of aircraft often mention benefits to the public. These benefits

include reduced air traffic, reduced noise and air pollution, and reduced high-risk, low-altitude flight operations.

As proposed, part 142 training centers would provide students with at least five benefits: (1) Training in emergency situations not safely duplicated in an aircraft; (2) increased diversity in training options; (3) training, testing, and checking in flight simulators and flight training devices; (4) exposure to innovative and diverse training programs; and (5) all or part of the necessary training for a particular certificate or rating.

The FAA expects that as part 142 training centers, if created, mature, the use of flight simulators, flight training devices, and innovative programs could become more common in general aviation training and thus would also provide benefits to those students. The FAA believes however that, based on current conditions, most general aviation flight simulators and flight training devices are likely to replace complex aircraft used in training, testing, and checking rather than aircraft used in primary training; the cost to develop a flight simulator or a flight training device for a single-engine, non-complex airplane used for primary training may not be cost-effective at this time. As proposed, a student could enroll in a complete training program with ground, flight, and flight simulator instruction at a proposed part 142 training center. That same student could also enroll at a part 141 pilot school that has contracted a block of training to a part 142 training center. (The block would not have to consist only of training in a flight simulator or flight training device.) If all of a student's training for a certificate or rating was acquired at a part 142 training center, the maximum number of hours that could be accomplished in a flight simulator or flight training device would depend on the training center's approved program. If a portion of the training for a certificate or rating is provided by a part 142 training center, only the maximum number of hours listed in the proposed part 61 amendments could be applied to the minimum requirements for the certificate or rating.

The following example illustrates how the use of a flight simulator or flight training device would lower the training costs for an applicant for a particular certificate. Existing § 61.129(b) requires that an applicant for a commercial pilot certificate with an airplane category rating have 250 hours of flight time, 50 hours of which could be in a flight simulator or flight training device. Proposed § 61.129(b) would permit the applicant to accomplish 100 of these hours in a flight simulator or flight training device. If an applicant for a commercial pilot accomplished an additional 50 of the permitted 100 hours in a flight simulator or flight training device, the costsavings would be significant. Based on FAA values of the operational cost of airplanes, the savings for one applicant would range from approximately $2,000 to approximately $5,500, depending on whether the hours would have been spent in a single-engine or multiengine piston airplane. From 1985 through 1989, the FAA issued an average of approximately 10,000 original commercial certificates per year. If only 100 applicants, or 1 percent, would be able to save the cost of operating an airplane, the total savings per year would range from $200,000 to $550,000 per year.

As proposed, part 142 offers several benefits to pilot schools that wish to gain a training center certificate: (1) A training center certificate issued under a central office rather than a decentralized local offices; (2) the ability, under certain provisions, described earlier in the preamble, to provide training programs with fewer than the minimum number of hours required in part 61 or part 141; (3) the opportunity to establish satellite training centers; (4) a certificate with no reoccurring requirement for certificate renewal; (5) provisions to develop innovative training programs; (6) provisions to provide all or partial training, testing, and checking for certificates and ratings in flight simulators or flight training devices; and (7) elimination or reduction of petitions for exemptions for the performance training, testing, and checking in a flight simulator or flight training device.

As an example of the diversity available under the proposal, a part 142 training center could provide a training program in a flight simulator and a flight training device for an instrument rating (for either an airplane or a helicopter). A student could accomplish flight training (for example, initial certification and cross-country requirements) at several different training institutions, then accomplish the instrument portion of the training, and the instrument rating, in a flight simulator or flight training device at a part 142 training center.

An aircraft manufacturer could apply for a proposed part 142 training center certificate. Proposed § 142.103 would permit an aircraft manufacturer's training center to provide initial operating experience (IOE) to a training cadre of air carrier certificate holders. Such an arrangement could be beneficial to customers, especially when a new aircraft model is introduced.

As proposed, a part 142 training center would provide two benefits to operators under part 121 or part 135. These operators could (1) contract with a part 142 training center to provide training, testing, and checking; or (2) apply for a part 142 training center certificate to provide training, testing, and checking for persons they do not employ. An operator that desired to use a flight simulator or a flight training device in training, testing, or checking its aircrew employees could utilize either of the above options. The operator could train, test, or check its aircrew employees at a part 142 training center; or, if the operator desired to invest in a flight simulator or a flight training device, the operator could maximize the investment by obtaining a part 142 certificate to train, test, or check aircrews it does not employ, as well as its own aircrew employees.

The relaxation and expansion of present requirements as well as the establishment of proposed part 142 training centers could stimulate growth in the development and manufacture of flight simulators and flight training devices. At present, many of these devices have been developed for air carrier, commuter, and corporate operations. If adopted, the proposal could stimulate demand for more flight simulators and flight training devices that represent additional aircraft.

Benefits to flight safety include the removal of training aircraft from airspace, including the congested airport traffic environment, the ability to better focus the flightcrew's attention on the training situation versus the flight environment, and reduced accident rates. Other benefits include a reduction, essentially elimination, of fuel consumed, and a reduction of engine emissions and noise pollution. Flight simulators and flight training devices provide more focused, in-depth, efficient training than do actual aircraft. Maneuvers and procedures can be halted for analysis by the student and the instructor. A broader range of operational and environmental situations can be used.

As the use of flight simulators and flight training devices expands in all aspects of training, safety benefits that would result would include a lower accident rate for instructional training. Because flight simulators and flight training devices enable aircrews to practice maneuvers and procedures that are more difficult or unsafe to duplicate,

and sometimes impossible to practice, in an aircraft, the expansion of these devices would contribute to fewer accidents and incidents.

In the 5 years from 1983 through 1987, the general aviation accident rate for instructional flying increased from 6.51 per 100,000 aircraft hours flown to 6.87 per 100,000 aircraft hours flown. The fatal accident rate rose from 0.45 to 0.61 per 100,000 aircraft hours flown. Even though many of these accidents occurred in single-engine airplanes, the FAA expects that this rate would decrease as the use of part 142 training centers increases.

In addition, greater use of flight simulators and flight training devices could benefit aviation safety by allowing more frequent and more extensive reviews of emergency procedures. Because of airspace complexity and general safety practices, some emergency procedures are not practiced either as often or as extensively as is desirable. The pilot was cited as a cause in approximately 2,055 of the 2,277 fatal accidents that occurred in general aviation airplanes from 1983 through 1987. The pilot was cited as a cause in approximately 145 of the 175 fatal accidents that occurred in general aviation rotorcraft during that period. Based on the average number of fatalities per fatal accident, the FAA estimates that during the 5-year period, more than 4,100 fatalities occurred in airplane and rotorcraft accidents in which the pilot was cited as a cause.

Based on the current value of a statistical fatality avoided, $1.5 million, the benefit of statistical fatalities avoided would be approximately $6,200 million over 5 years, or an average of approximately $1,200 million per year.

The FAA estimates that only 10 percent of fatal accidents occur in aircraft for which emergency training in flight simulators or flight training devices could improve safety. Because flight simulator technology is still developing, an increase in the number of statistical fatalities avoided would probably not appear until at least 3 years after the adoption of the proposal. If only 1 percent of the fatal accidents were averted through emergency training in flight simulators or flight training devices, the cost benefit would amount to $1.2 million per year.

Reduced general aviation accidents are not the only safety benefit that would result from this proposal. As proposed, part 142 would also expand the use of flight simulators and flight training devices for training persons who are employed by part 121 or part 135 certificate holders. An FAA review of NTSB reports of accidents and incidents that occurred from 1983 through 1987 in all part 121 and 135 operations found examples of accidents and incidents in which training in a flight simulator or flight training device could have improved safety. These occurrences included emergency landings, landing gear failures, and windshear encounters.

FAA guidance provides an estimated cost to replace destroyed aircraft and restore substantially damaged aircraft and on the estimated values of a statistical fatality avoided ($1.5 million), a serious injury avoided ($640,000), and a minor injury avoided ($2,300). Using these values, the FAA estimates that the average total potential safety benefit is approximately $180 million per year. This includes approximately $33 million, in 1990 dollars, for the average annual cost of replacing and restoring aircraft, and approximately $150 million for the average annual cost of statistical fatalities and injuries avoided. Even if the increased use of flight simulators and flight training devices decreases such occurrences by 0.5 percent, the savings would be approximately $900,000 per year.

Comparison of Costs and Benefits

The proposal to establish a part 142 training center certificate with the opportunity for additional training, testing, and checking is anticipated to become cost-beneficial after approximately 3 years. After 10 years, the annual cost for the training center national office and the one-time cost for organizations that currently hold exemptions is expected to be approximately $3.5 million, discounted. Because the benefits of this proposal are contingent on the establishment of proposed part 142 training centers and the training, testing, and checking of pilots at those training centers, and because such instruction is currently performed under exemption, the FAA expects that benefits would not appear until the third year after the adoption of the proposal; however, the total benefits after 10 years are expected to be approximately $11 million, discounted. According to the FAA's estimates, the benefits of the proposal to establish the part 142 training center would exceed costs by 3 to 1 after 10 years.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act (RFA) of 1980 was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review proposed rules that may have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities.

This proposal could affect various organizations that engage in the training, testing, and checking of aircrews. FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, provides criteria for rulemaking officials to apply when determining if a proposal will have a significant economic impact on a substantial number of small entities. Organizations that could be affected by the proposal include parts 121 and 135 operators of aircraft for hire. The size threshold for these organizations to be considered small entities is a fleet size of nine aircraft or fewer. The threshold annualized cost levels for small entities are approximately $4,200 to $108,000 in 1990 dollars for operators of aircraft for hire. (The actual threshold annualized cost levels vary with the size of aircraft and whether operations are scheduled or unscheduled.) The FAA believes that a significant number of training organizations that are not certificated under part 141 employ fewer than ten persons and are therefore considered small entities. According to FAA records, 2,900 operators of aircraft for hire, most of which are unscheduled operators, have a fleet size of nine aircraft or fewer and are therefore considered small entities.

The proposal would incorporate into the FAR practices that are currently permitted by exemption. Any costs that would be incurred would stem from the application for the proposed part 142 certificate. The organizations that currently hold exemptions from part 61 requirements are pilot schools and other entities (i.e., manufacturers, corporations) that perform training, testing, or checking of aircrews; however, none of these exemption holders is considered to be small entities. Compliance with the proposed part 142 certificate is voluntary. Therefore, based on the FAA's initial regulatory evaluation of the proposal, the FAA has determined that the proposal would not have a significant economic impact on part 121 operators or part 135 operators that are considered to be small entities.

International Trade Impact Analysis

The FAA has determined that the proposed rules would not have a significant impact on international trade. The revised rules primarily affect the training of individual pilots and the operations of pilot training. The FAA is of the opinion that the proposal would not affect operators in training foreign

citizens who accomplish pilot training in the United States.

Federalism Implications

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this proposed regulation is not major under Executive Order 12291 and that this proposal, if adopted, would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This proposal is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). An initial regulatory evaluation of the proposal, including a Regulatory Flexibility Determination and Trade Impact Analysis, has been placed in the regulatory docket. A copy may be obtained by contacting the person identified under **FOR FURTHER INFORMATION CONTACT.**

List of Subjects

14 CFR Part 1

Air transportation.

14 CFR Part 61

Aircraft, Airmen, Reporting and recordkeeping requirements.

14 CFR Part 91

Agriculture, Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Freight, Iraq, Noise control, Political candidates, Reporting and recordkeeping requirements.

14 CFR Part 121

Air carriers, Aircraft, Airmen, Aviation safety, Charter flights, Drug testing, Reporting and recordkeeping requirements, Safety, Transportation.

14 CFR Part 125

Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 135

Air taxis, Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 141

Airmen, Educational facilities, Reporting and recordkeeping requirements, Schools.

14 CFR Part 142

Administrative practice and procedure, Aircraft, Airmen, Drug testing, Educational facilities, Reporting and recordkeeping requirements.

The Proposed Amendments

In consideration of the foregoing, the Federal Aviation Administration proposes to amend SFAR 58 and parts 1, 61, 91, 121, 125, 135, and 141 of the Federal Aviation Regulations (14 CFR parts 1, 61, 91, 121, 125, 135, and 141) and to add part 142 (14 CFR part 142) as follows:

Special Federal Aviation Regulation 58

1. SFAR 58 2. is amended by revising the definition of *training center* to read as follows:

SFAR No. 58—Advanced Qualification Program

* * * * *

2. Definitions. As used in this SFAR:

* * * * *

Training center means an independent organization certificated under part 142 of this chapter, or an organization approved by the Administrator, to operate under this SFAR prior to [The Effective Date of the Final Rule], that provides training under contract to other arrangement to part 121 or part 135 certificate holders. A training center may be a part 121 or part 135 certificate holder that provides training to another part 121 or part 135 certificate holder, an aircraft manufacturer that provides training to a part 121 or part 135 certificate holder, or any non-certificate holder that provides training to a part 121 or part 135 certificate holder.

* * * * *

2. SFAR 58 11. is amended by adding paragraph (d) to read as follows:

Special Federal Aviation Regulation No. 58—Advanced Qualification Program

* * * * *

11. Approval of Training, Qualification, or Evaluation by a Person who Provides Training by Arrangement.

* * * * *

(d) Approval for the training, qualification, or evaluation by a person who provides training by arrangement authorized by this section expires 2 years from [The Effective Date of the Final Rule]. The requirements for approval of training, qualification, or evaluation by a person who provides training by arrangement are as stated in part 142 of this chapter.

* * * * *

PART 1—DEFINITIONS AND ABBREVIATIONS

3. The authority citation for part 1 continues to read as follows:

Authority: 49 U.S.C. 1347, 1348, 1354(a), 1357(d)(2), 1372, 1421 through 1430, 1432, 1442, 1443, 1472, 1510, 1522, 1652(e), 1655(c), 1657(f), 49 U.S.C. 106(g) (Revised Pub. L. 97–449, Jan. 12, 1983).

4. Section 1.1 is amended by adding the following definitions following the definition of "category III operations":

§ 1.1 General definitions.

* * * * *

(1) Category IIIa. An ILS approach and landing with no decision height (DH), or a DH below 100 feet (30 meters), and controlling runway visual range not less than 700 feet (200 meters).

(2) Category IIIb. An ILS approach and landing with no DH, or with a DH below 50 feet (15 meters), and controlling runway visual range less than 700 feet (200 meters), but not less than 150 feet (50 meters).

(3) Category IIIc. An ILS approach and landing with no DH and no runway visual range limitation.

* * * * *

PART 61—CERTIFICATION: PILOTS FLIGHT INSTRUCTORS

5. The authority citation for part 61 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1355, 1421, 1422, and 1427; 49 U.S.C. 106(g) (Revised Pub. L. 97–449; January 12, 1983).

6. Section 61.1a is added to read as follows:

§ 61.1a Definition of terms.

For the purpose of this part:

(a) *Authorized Instructor* means—

(1) An instructor who has a valid ground instructor certificate or current flight instructor certificate with appropriate ratings issued by the Administrator;

(2) An instructor authorized under SFAR 58, part 121, part 135, or part 142 of this chapter to give instruction under those parts; or

(3) Any other person authorized by the Administrator to give instruction under this part.

(b) *Flight Simulator, Airplane* means a device that—

(1) Is a full-sized airplane cockpit replica of a specific type of airplane, or make, model, and series of airplane;

(2) Includes the hardware and software necessary to represent the airplane in ground operations and flight operations;

(3) Utilizes a force cueing system that provides cues at least equivalent to those cues provided by a 3 degree of freedom motion system;

(4) Utilizes a visual system that provides at least a 45° horizontal field of view and a 30° vertical field of view simultaneously for each pilot; and

(5) Has been evaluated, qualified, and approved by the Administrator.

(c) *Flight Simulator, Helicopter* means a device that—

(1) Is a full-sized helicopter cockpit replica of a specific type of aircraft, or make, model, and series of helicopter;

(2) Includes the hardware and software necessary to represent the helicopter in ground operations and flight operations;

(3) Utilizes a force cueing system that provides cues at least equivalent to those cues provided by a 3 degree of freedom motion system;

(4) Utilizes a visual system that provides at least a 45° horizontal field of view and 30° vertical field of view simultaneously for each pilot; and

(5) Has been evaluated, qualified, and approved by the Administrator.

(d) *Flight Training Device* means a device that—

(1) Is a full-sized replica of instruments, equipment, panels, and controls of an airplane or rotorcraft, or set of airplanes or rotorcraft, in an open flight deck area or in an enclosed cockpit, including the hardware and software for systems installed, necessary to simulate the airplane or rotorcraft in ground operations and flight operations;

(2) Does not require a force (motion) cueing or visual system; and

(3) Has been evaluated, qualified, and approved by the Administrator.

(e) *Set of airplanes or rotorcraft* means airplanes or rotorcraft which all share similar performance characteristics, such as similar airspeed and altitude operating envelope, similar handling characteristics, and the same number and type of propulsion system or systems.

7. Section 61.2 is revised to read as follows:

§ 61.2 Certification of foreign pilots and flight instructors.

(a) A person who is neither a United States citizen nor a resident alien may be issued a pilot certificate or flight instructor certificate under this part (other than under § 61.75 or § 61.77), outside the United States, only when the Administrator finds that—

(1) The pilot certificate is needed for the operation of a U.S.-registered civil aircraft; or

(2) The flight instructor certificate is needed for the training of students who are citizens of the United States.

(b) Training centers, and their satellite training centers certificated under part 142 of this chapter, may, outside the United States—

(1) Add additional ratings and endorsements to certificates issued by the Administrator under the provisions of this part; and

(2) Issue certificates to United States citizens within the authority granted to that training center by the Administrator.

8. Section 61.3 is amended by revising the introductory text of paragraph (d) and by adding a new paragraph (i) to read as follows:

§ 61.3 Requirement for certificates, ratings, and authorizations.

* * * * *

(d) Unless otherwise authorized by the Administrator, no person other than the holder of a flight instructor certificate issued in accordance with Subpart G of this part, with an appropriate rating on that certificate, may—

* * * * *

(i) Category III pilot authorization.

(1) No person may act as pilot in command of a civil aircraft during Category III operations unless—

(i) That person holds a current Category III pilot authorization for that category or class of aircraft, and the type of aircraft, if applicable; or

(ii) In the case of a civil aircraft of foreign registry, that person is authorized by the country of registry to act as pilot in command of that aircraft in Category III operations.

(2) No person may act as second in command of a civil aircraft during Category III operations unless that person—

(i) Holds a valid pilot certificate with category and class ratings for that aircraft and a current instrument rating for that category aircraft;

(ii) Holds an airline transport pilot certificate with category and class ratings for that aircraft; or

(iii) In the case of a civil aircraft of foreign registry, is authorized by the country of registry to act as second in command of that aircraft during Category III operations.

9. A new section 61.4 is added to read as follows:

§ 61.4 Qualification and approval of flight simulators and flight training devices.

Each flight simulator and each flight training device used for training, testing, and checking under this part must be qualified and approved by the Administrator for—

(a) The training, testing, and checking for which it is used;

(b) Each particular maneuver, procedure, or crewmember function performed; and

(c) The representation of the specific category and class of aircraft, type of aircraft, particular variation within type of aircraft, or set of aircraft in the case of some flight training devices.

10. Section 61.13 is amended by revising paragraph (e) to read as follows:

§ 61.13 Application and qualification.

* * * * *

(e) The following requirements apply to a Category II pilot authorization and to a Category III pilot authorization:

(1) The authorization is issued by a letter of authorization as a part of the applicant's instrument rating or airline transport pilot certificate.

(2) Upon original issue the authorization contains a visibility limitation—

(i) For Category II operations, the limitation is 1,600 feet RVR and a 150-foot decision height; and

(ii) For Category III operations, each initial limitation is specified in the authorization document.

(3) Limitations on an authorization may be removed as follows:

(i) In the case of Category II limitations, a limitation is removed when the holder shows that, since the beginning of the sixth preceding month, the holder has made three Category II ILS approaches with a 150-foot decision height to a landing under actual or simulated instrument conditions.

(ii) In the case of Category III limitations, a limitation is removed as specified in the authorization.

(4) For the practical test required by this part for a Category II or a Category III authorization, a flight simulator or flight training device may be used for simulated instrument conditions, if approved by the Administrator for simulated instrument conditions.

* * * * *

11. Section 61.21 is amended by revising the section heading and the first sentence to read as follows:

§ 61.21 Duration of Category II and Category III pilot authorization.

A Category II pilot authorization and a Category III pilot authorization expire

on the last day of the sixth month after the month last issued or renewed. * * *

12. Section 61.39 is amended by adding new paragraphs (a)(6) and (a)(7) to read as follows:

§ 61.39 Prerequisites for flight tests.

* * * * *

(a) * * *

(6) If all increments of the practical test for a certificate or rating are not taken on one date, all remaining increments of the test must be completed not more than 60 calendar days after the date on which the applicant begins the test.

(7) If all increments of the practical test are not satisfactorily completed within 60 calendar days as required by paragraph (a)(6) of this section, the applicant must retake the entire practical test, including those increments satisfactorily completed.

* * * * *

13. Section 61.45 is amended by revising the section title and paragraphs (a), (c), and (d) to read as follows:

§ 61.45 Practical tests: Required aircraft and equipment.

(a) *General.* Except when an applicant for a certificate or rating under this part is permitted to accomplish the entire flight increment of the practical test in a qualified and approved flight simulator or in a qualified and approved flight training device, the applicant—

(1) Must furnish for each required test, except as provided by paragraph (a)(2) of this section, an aircraft of United States registry—

(i) Of the category and class aircraft, and type aircraft, if applicable, for which the applicant is applying for a certificate or rating; and

(ii) That has a current standard or limited airworthiness certificate.

(2) At the discretion of the person authorized by the Administrator to conduct the test, the applicant may furnish—

(i) An aircraft that has a current airworthiness certificate other than standard or limited, but that otherwise meets the requirement of paragraph (a)(1) of this section;

(ii) An aircraft of the category and class, and type aircraft, if applicable, of foreign registry that is certificated by the country of registry; or

(iii) A military aircraft of the category and class aircraft, and type aircraft, if applicable, for which the applicant is applying for a certificate or rating.

(b) * * *

(c) *Required controls.* An applicant must furnish for each practical test an aircraft—

(1) (Other than lighter-than-air) listed in paragraph (a) of this section.

(2) That has engine controls and flight controls—

(i) That are easily reached; and

(ii) Unless the evaluator conducting the test accepts otherwise, that can be operated in a conventional manner by both the applicant and the evaluator.

(d) *Simulated instrument flight equipment.* An applicant for any practical test involving flight maneuvers and flight procedures accomplished solely by reference to instruments, must furnish equipment that—

(1) Excludes the applicant's visual reference to objects outside the aircraft; and

(2) Is otherwise acceptable to the Administrator.

* * * * *

14. Section 61.51 is amended by revising paragraphs (b)(1)(ii), (b)(1)(iv), (b)(3)(iii), (c)(2)(i), (c)(4), and (c)(5), and by adding new paragraphs (b)(2)(viii) and (c)(2)(iv) to read as follows:

§ 61.51 Pilot logbooks.

* * * * *

(b) * * *

(1) * * *

(ii) Total time of flight or lesson.

(iii) * * *

(iv) Type and identification of aircraft, flight simulator, or flight training device.

(2) * * *

(viii) Instruction in a flight simulator or instruction in a flight training device.

(3) * * *

(iii) Simulated instrument conditions in actual flight, in a flight simulator, or in a flight training device.

(c) * * *

(2) * * *

(i) A private or commercial pilot may log as pilot-in-command time that flight time when the pilot is—

(A) The sole manipulator of the controls of an aircraft for which the pilot is rated; or

(B) Acting as pilot in command of an aircraft on which more than one pilot is required under the type certification of the aircraft or the regulation under which the flight is conducted.

* * * * *

(iv) A recreational pilot may log as pilot-in-command time only that time when the pilot is the sole manipulator of the controls of an aircraft for which the pilot is rated.

* * * * *

(4) Instrument flight time.

(i) Except as provided in paragraph (c)(4)(iv) of this section, a pilot may log as instrument flight time only that time when the pilot operates an aircraft solely by reference to instruments under actual or simulated instrument flight conditions.

(ii) For simulated instrument conditions a qualified and approved flight simulator or qualified and approved flight training device may be used.

(iii) Each entry in the pilot logbook must include—

(A) The place and type of each instrument approach completed; and

(B) The name of the safety pilot for each simulated instrument flight conducted in flight.

(iv) An instrument flight instructor conducting instrument flight instruction in actual instrument weather conditions may log instrument time.

(5) Instruction time. All time logged as instruction time must be certified by the authorized instructor from whom it was received.

* * * * *

15. Section 61.55 is amended by revising paragraphs (b)(2)(ii) and by adding new paragraphs (b)(3)(1), (b)(3)(ii), and (b)(4) to read as follows:

§ 61.55 Second-in-command qualifications.

* * * * * *

(b) * * *

(2) * * *

(ii) Engine-out procedures and maneuvering with an engine out while executing the duties of a pilot in command.

(3) The requirements of this paragraph (b) may be accomplished in a flight simulator that is—

(i) Qualified and approved by the Administrator for such purposes; and

(ii) Used in accordance with an approved course conducted by a training center certificated under part 142 of this chapter.

(4) An applicant for an initial second-in-command qualification for a particular category and class of aircraft, and type of aircraft, if applicable, shall satisfactorily complete during the qualification test a minimum of one takeoff and one landing in an aircraft of the same category and class of aircraft, and type of aircraft, if applicable, for which the qualification is sought.

* * * * *

16. Section 61.56 is amended by revising paragraph (e) and adding a new paragraph (h) to read as follows:

§ 61.56 Flight review.

* * * * *

(e) An applicant who has, within the period specified in paragraphs (c) and (d) of this section, satisfactorily completed a test for a pilot certificate, rating, or operating privilege, need not

accomplish the flight review required by this section if the test was conducted by a person authorized by the Administrator, or authorized by a United States Armed Force, to conduct the check.

* * * * *

(h) A flight simulator or flight training device may be used to meet the flight review requirements of this section subject to the following conditions:

(1) The flight simulator or flight training device must be approved by the Administrator for that purpose.

(2) The flight simulator or flight training device must be used in accordance with an approved course conducted by a training center certificated under part 142 of this chapter.

(3) Unless the review is undertaken in a flight simulator that is approved for landings, the applicant must meet the takeoff and landing requirements of § 61.57 (c) or (d) of this part.

(4) The flight simulator or flight training device used must represent an aircraft, or set of aircraft, for which the pilot is rated.

17. Section 61.57 is amended by revising the section heading and paragraphs (c), (d), and (e) to read as follows:

§ 61.57 Pilot-in-command currency.

* * * * *

(c) *General experience.*

(1) Except as otherwise provided in this paragraph (c), no person may act as pilot in command of an aircraft carrying passengers, or of an aircraft certificated for more than one required pilot flight crewmember, unless that person meets the following requirements—

(i) Within the preceding 90 calendar days, that person must have made three takeoffs and three landings as the sole manipulator of the flight controls in an aircraft of the same category and class and, if a type rating is required, of the same type of aircraft.

(ii) If the aircraft operated under paragraph (c)(1)(i) of this section is a tailwheel airplane, that person must have made to a full stop the landings required by that paragraph.

(2) For the purpose of meeting the requirements of this section, a person may act as pilot in command of a flight under day visual flight rules (VFR) or day instrument flight rules (IFR) if no persons or property are carried other than as necessary for compliance with this part.

(3) This paragraph (c) does not apply to operations conducted under part 121 or part 135 of this chapter.

(4) The takeoffs and landings required by paragraph (c)(1) of this section may be accomplished in a flight simulator or flight training device subject to the following—

(i) The flight simulator or flight training device must have been qualified and approved by the Administrator for landings; and

(ii) The flight simulator or flight training device must be used in accordance with an approved course conducted by a training center certificated under part 142 of this chapter.

(d) *Night experience.*

(1) No person may act as pilot in command of an aircraft carrying passengers at night (the period beginning 1 hour after sunset and ending 1 hour before sunrise (as published in the American Air Almanac) unless, within the preceding 90 days, that person has made not fewer than three takeoffs and three landings to a full stop, at night, as the sole manipulator of the flight controls in the same category and class of aircraft.

(2) Paragraph (d)(1) of this section does not apply to operations conducted under part 121 or part 135 of this chapter.

(3) The takeoffs and landings required by paragraph (d)(1) of this section may be accomplished in a flight simulator that is—

(i) Qualified and approved by the Administrator for takeoffs and landings, if the visual system is adjusted to represent the time of day described in paragraph (d)(1) of this section; and

(ii) Used in accordance with an approved course conducted by a training center certificated under part 142 of this chapter.

(e) *Instrument currency.*

(1) No person may act as pilot in command under IFR, or in weather conditions less than the minimums prescribed for VFR, unless, within the preceding 6 calendar months, that person has—

(i) In the case of an aircraft other than a glider—

(A) Logged at least 6 hours of instrument time including at least six instrument approaches under actual or simulated instrument conditions, at least 3 hours of which must have been in aircraft other than gliders; or

(B) Passed an instrument competency test as described in paragraphs (e)(2) and (e)(3) of this section; or

(ii) In the case of a glider, the person must have logged at least 3 hours of instrument time, at least half of which was in a glider or an airplane, except that the person may not carry a passenger in the glider until that person has completed at least 3 hours of instrument flight time in a glider.

(2) A person who does not meet the recent instrument experience requirements of paragraph (e)(1) of this section during the prescribed time, or within 6 calendar months thereafter, may not serve as pilot in command under IFR, or in weather conditions less than the minimums prescribed for VFR, until that person passes an instrument competency test in the category and class of aircraft involved, given by a person authorized by the Administrator to conduct the test.

(3) The Administrator may authorize the conduct of all or part of the test required by paragraph (e)(2) of this section in a qualified and approved flight simulator or flight training device.

18. Section 61.58 is revised to read as follows:

§ 61.58 Pilot-in-command proficiency check: Operation of aircraft requiring more than one required pilot.

(a) Except as otherwise provided in this section, to serve as pilot in command of an aircraft that is type certificated for more than one required pilot crewmember, a person must—

(1) Within the preceding 12 calendar months, complete a pilot-in-command check in an aircraft that is type certificated for more than one required pilot crewmember; and

(2) Within the preceding 24 calendar months, complete a pilot-in-command check in the particular type of aircraft in which that person will serve as pilot in command.

(b) This section does not apply to persons conducting operations subject to Subparts N and O of part 121, SFAR 58, part 125, part 127, part 133, part 135, or part 137 of this chapter.

(c) The pilot-in-command checks given in accordance with the provisions of part 121, part 125, part 127, or part 135 of this chapter may be used to satisfy the requirements of this section.

(d) The pilot-in-command checks required by paragraph (a) of this section may be accomplished by satisfactory completion of one of the following:

(1) A pilot-in-command check conducted by a person authorized by the Administrator, consisting of the maneuvers and procedures required for a type rating.

(2) The practical test required for a type rating.

(3) The initial or periodic practical test required for the issuance of a pilot examiner or a check airman designation; or

(4) A military flight check required for a pilot in command with instrument privileges, in an aircraft that the military

requires to be operated by more than one pilot.

(e) Except as provided in paragraphs (f) and (g) of this section, if an applicant for a check required by this section has satisfactorily completed a pilot-in-command check within the period required by paragraph (a)(1) or (a)(2) of this section, a check or a test described in paragraphs (d)(1) through (d)(4) of this section may be accomplished in a flight simulator qualified and approved under part 142 of this chapter subject to the following:

(1) If an otherwise qualified and approved flight simulator used for a pilot-in-command proficiency check is not qualified and approved for a specific required maneuver—

(i) The training center shall annotate, in the applicant's training record, the maneuver or maneuvers omitted; and

(ii) Prior to acting as pilot in command, the pilot shall demonstrate proficiency in each omitted maneuver in an aircraft or flight simulator qualified and approved for each omitted maneuver.

(2) Except as provided in paragraph (e)(3) of this section, the circling approach maneuvers of the proficiency check must be accomplished in a qualified and approved flight simulator equipped with a visual system that permits accomplishment of the circling approach task.

(3) If the flight simulator used pursuant to this paragraph is not qualified and approved for circling approaches—

(i) The applicant's record shall be annotated with the statement, "Proficiency in circling approaches not demonstrated;" and

(ii) The applicant may not perform circling approaches as pilot in command when weather conditions are less than the basic VFR conditions described in § 91.155 of this chapter, until proficiency in circling approaches has been successfully demonstrated in an approved simulator or aircraft to a person authorized by the Administrator to conduct the check required by this section.

(f) If a pilot has not completed a pilot-in-command proficiency check within the period required by paragraph (a)(1) or (a)(2) of this section, that pilot must complete the required pilot-in-command proficiency check in an aircraft.

(g) The first pilot-in-command proficiency check required by paragraph (a)(1) and (a)(2) of this section must be completed in an aircraft.

(h) For the purpose of meeting the check requirements of paragraph (a) of this section, a person may act as pilot in command of a flight under day VFR conditions or day IFR conditions if no person or property is carried, other than as necessary to demonstrate compliance with this part.

(i) If a pilot takes the check required by this section in the calendar month before, or the calendar month after, the month in which it is due, the pilot is considered to have taken it when due, and the future proficiency check due dates do not change.

19. Section 61.63 is amended by revising paragraph (a) and the section heading to read as follows:

§ 61.63 Additional aircraft ratings for other than airline transport pilot certificates (for parts 121 and 135 use only).

(a) General. To be eligible for an additional aircraft rating to a pilot certificate, an applicant who is a pilot crewmember employee of a part 121 certificate holder or a part 135 certificate holder must meet the requirements of paragraphs (b) through (d) of this section, as applicable to the rating sought.

* * * * *

20. A new section 61.64 is added to read as follows:

§ 61.64 Additional aircraft ratings for other than airline transport pilot certificates (for other than parts 121 and 135 use).

(a) *General.* To be eligible for an additional aircraft rating to a pilot certificate, an applicant who is not a crewmember employee applicant of a part 121 training program or a part 135 training program must meet the requirements of paragraphs (b) through (i) of this section, applicable to the rating sought.

(b) *Category rating.* An applicant who holds a pilot certificate and applies to add a category rating must meet the following requirements:

(1) Present a record of training certified by an authorized flight instructor showing that the applicant has—

(i) Received ground training on the aeronautical knowledge areas applicable to the pilot certificate and aircraft category and class rating sought;

(ii) Received flight training on the areas of operation applicable to the pilot certificate and aircraft category and class rating sought;

(iii) Been found competent by the certifying flight instructor in the aeronautical knowledge areas required for the pilot certificate to which the added aircraft category rating would apply; and

(iv) Been found competent by the certifying flight instructor in the areas of operation required for the pilot certificate to which the added aircraft category rating would apply.

(2) Pass the required knowledge test, applicable to the pilot certificate and aircraft category and class rating sought; and

(3) Pass a practical test—

(i) Required for the pilot certificate held; and

(ii) Required for the category and class rating sought.

(c) *Class rating.* An applicant who holds a pilot certificate and applies to add a class rating must meet the following requirements:

(1) The applicant must present a record certified by an authorized flight instructor showing that the applicant has—

(i) Received flight instruction in the class of aircraft on the areas of operation applicable to the pilot certificate and aircraft class rating sought;

(ii) Received ground training on the aeronautical knowledge areas applicable to the pilot certificate and aircraft class rating sought;

(iii) Been found competent by the certifying flight instructor in the aeronautical knowledge areas applicable to the pilot certificate to which the category and class rating would apply; and

(iv) Been found competent by the certifying flight instructor in the areas of operation applicable to the pilot certificate to which the aircraft class rating would apply;

(2) Pass a knowledge test, appropriate to the pilot certificate and aircraft class rating sought; and

(3) Pass a practical test—

(i) Required for the pilot certificate held; and

(ii) Required for the category and class rating sought.

(d) *Type rating.* An applicant who holds a pilot certificate and applies to add a type rating must meet the following requirements—

(1) Present a record of training certified by an authorized ground or flight instructor that shows that the applicant has—

(i) Received ground training on the aeronautical knowledge areas applicable to the type rating sought;

(ii) Received flight training on the areas of operation applicable to the type rating sought; and

(iii) Been found competent by the certifying flight instructor in the areas of operation required for the issue of the pilot certificate for which the aircraft type rating is sought.

(2) Passed a required practical test on the areas of operation listed in § 61.158

or § 61.163 of this part, as applicable, for the aircraft type rating sought.

(3) If the applicant does not hold an instrument rating, in addition to the tasks required by paragraph (d)(2) of this section, the applicant must also demonstrate competency in the operations required by § 61.65(g) of this part.

(e) The tasks required by paragraphs (b), (c), and (d) of this section shall be performed in—

(1) An airplane of the same type, for which the type rating is sought; or

(2) Subject to the limitations of paragraph (e)(3) of this section, a flight simulator or a flight training device that represents the airplane type for which the type rating is sought.

(3) The flight simulator or flight training device use permitted by paragraph (e)(2) of this section shall be conducted in accordance with an approved course at a training center certificated under part 142 of this chapter; or

(4) In another manner approved by the Administrator.

(f) An applicant for a type rating who provides an aircraft not capable of the instrument maneuvers and procedures required by § 61.158 or § 61.163 of this part for the practical test may—

(1) Obtain a type rating limited to "VFR only;" and

(2) Remove the "VFR only" limitation for each aircraft type in which the applicant demonstrates compliance with the instrument requirements of § 61.158 or § 61.163 or the requirements of § 61.73(e)(2) of this part.

(g) An applicant for a type rating may be issued a certificate with the limitation "VFR only" for each aircraft type not equipped for the applicant to show instrument competency.

(h) An applicant for a type rating in a multiengine, single-pilot-station airplane may meet the requirements of this part in another multiengine airplane.

(i) An applicant for a type rating in a single-engine, single-pilot-station airplane may meet the requirements of this part in another single-engine or multiengine airplane if the applicant meets the instrument currency requirements of § 61.57(e) of this part.

21. Section 61.65 is amended by removing and reserving paragraphs (d) and (f); revising paragraph (b) introductory text, paragraph (c) introductory text and (c)(1), (c)(3), (c)(4), and (c)(5), paragraph (e) introductory text and (e)(2) and (g); and adding paragraphs (c)(6) and (h) to read as follows:

§ 61.65 Instrument rating requirements.

* * * * *

(b) *Ground instruction and written test.* An applicant for the written test for an instrument rating must have received ground instruction or have logged home study in, and passed a written test on, at least the following areas of aeronautical knowledge applicable to the rating sought:

* * * * *

(c) *Flight instruction.* Except as otherwise provided in this paragraph, an applicant for the practical test for an instrument rating must present a record certified by an authorized flight instructor showing instrument flight instruction and competency in an aircraft of the same category for which the instrument rating is sought, in each of the following areas of operations:

(1) Control and accurate maneuvering of the aircraft solely by reference to instruments.

(2) * * *

(3) Instrument approaches to published minimums using two different nonprecision approach systems and one precision approach system.

(4) Cross-country flight in an aircraft in simulated or actual IFR conditions, on Federal airways or as routed by air traffic control (ATC), subject to the following:

(i) The flight must be at least 250 nautical miles (100 nautical miles for helicopters) including a minimum of one precision instrument approach and two nonprecision instrument approaches.

(ii) Each instrument approach must be accomplished at a different airport.

(iii) If the departure and final destination airports are the same airport, the destination airport may be considered as the third airport.

(iv) No approach need be done more than once.

(5) Simulated emergencies involving equipment or instrument malfunctions, missed approach procedures, deviations to unplanned alternates, recovery from unusual attitudes, loss of communications, and simulated loss of power on at least one-half of the engines if a multiengine aircraft is used.

(6) Flight instruction required by paragraphs (c)(1), (c)(2), (c)(3), and (c)(5) of this section may be accomplished in a qualified and approved flight simulator or in a qualified and approved flight training device.

(d) [Reserved]

(e) *Flight experience.* Except as provided in paragraph (h) of this section, an applicant for an instrument rating must have at least the following flight time as a pilot:

(1) * * *

(2) 40 hours of simulated or actual instrument time, which may include—

(i) Not more than a combined total of 20 hours of instrument instruction by an authorized instructor in a qualified and approved flight simulator or in a qualified and approved flight training device; or

(ii) Not more than 30 hours of instrument instruction accomplished in an approved course conducted by a training center certificated under part 142 of this chapter.

(3) * * *

(f) [Reserved]

(g) *Practical test.* An applicant for an instrument rating must pass a practical test consisting of an oral increment and a flight increment.

(1) The flight increment required by this paragraph (g) may be accomplished in any category, class, and type aircraft that is certificated for flight in instrument conditions, or in a qualified and approved flight simulator or qualified and approved flight training device.

(2) The practical test required by this paragraph (g) must include instrument flight procedures, selected by the person authorized by the Administrator to conduct the practical test, to determine the applicant's ability to perform competently the IFR operations described in paragraph (c) of this section.

(3) The following requirements of the practical test must be accomplished in an aircraft or in a qualified and approved flight simulator:

(i) At least one published precision, nonprecision, and circling approach.

(ii) At least one landing.

(iii) At least one cross-country flight.

(h) *Training qualifications.* An applicant for the instrument rating who has satisfactorily completed an approved course of training conducted at a training center certificated under part 142 of this chapter must have—

(1) A total of at least 95 hours of pilot flight time, including at least 35 hours of simulated or actual instrument flight time; or

(2) Satisfactorily completed the requirements of an approved instrument rating course at a part 142 certified training center that has received approval from the Administrator to conduct a course of training satisfying the requirements of the instrument rating in—

(i) Fewer than 95 hours of pilot flight time; or

(ii) Fewer than 35 hours of simulated instrument time or actual instrument time.

22. Section 61.67 is amended by revising paragraphs (a)(2), (b), (b)(1), (b)(2), (c)(1) (ii) and (c)(2), (d)

introductory text, (d)(1) introductory text, and (d)(2), and by adding paragraphs (c)(3) through (c)(6), (d)(3) and (e) to read as follows:

§ 61.67 Category II pilot authorization requirements.

(a) * * *

(2) A type rating for an aircraft that requires a type rating.

(b) *Experience requirements.* An applicant for a Category II authorization must have at least—

(1) 50 hours of night flight time as pilot in command;

(2) 75 hours of instrument time during actual or simulated instrument conditions that may include not more than a combined total of—

(i) 25 hours of simulated instrument flight time in qualified and approved flight simulators or qualified and approved flight training devices; or

(ii) 40 hours of simulated instrument flight time if accomplished in an approved course conducted by an appropriately rated training center certificated under part 142 of this chapter.

* * * * *

(c) * * *

(1) * * *

(ii) An applicant for the addition of another type aircraft to a previously held authorization received within the preceding 24 months.

(2) To be eligible for the practical test, an applicant must—

(i) Meet the requirements of paragraphs (a) and (b) of this section;

(ii) Hold the appropriate class rating; and—

(iii) Within the preceding 12 calendar months, pass a practical test that includes Category II operations; or

(iv) Meet the following recent experience requirements—

(A) The requirements of § 61.57(e); and

(B) At least six ILS approaches since the beginning of the sixth month before the test, subject to the following:

(1) The approaches must be conducted under actual or simulated instrument flight conditions.

(2) The approaches must be conducted down to the minimum decision height for the ILS approach in the type aircraft in which the practical test is to be conducted.

(3) The approaches may be accomplished in a flight simulator that—

(i) Represents an aircraft of the same category and class of aircraft, and type of aircraft, as applicable, as the aircraft in which the authorization is sought;

(ii) Is used in accordance with an approved course conducted by a training center certificated under Part 142 of this chapter.

(3) The approaches may be accomplished in an aircraft of the same category and class of aircraft, and type of aircraft, as applicable, as the aircraft in which the practical test is to be conducted.

(4) The approaches need not be conducted down to the alert height or decision height, as applicable, authorized for Category II operations only if conducted in a qualified and approved flight simulator or qualified and approved flight training device.

(5) At least three of the approaches required by paragraph (c)(2)(iv)(B) of this section must be conducted manually, without the use of an approach coupler.

(6) The flight time acquired in meeting the requirements of paragraph (c)(2)(iv)(B) of this section may be used to meet the requirements of paragraph (c)(2)(iv)(A) of this section.

(d) *Practical test procedures.* The practical test consists of two increments:

(1) Oral increment. The applicant must demonstrate knowledge of the following:

* * * * *

(2) Flight increment. The flight increment shall consist of the following:

(i) At least two ILS approaches to 100 feet AGL including at least one landing and one missed approach.

(ii) All approaches must be made with the approved flight control guidance system, except that if an approved automatic approach coupler is installed, at least one approach must be hand flown using flight director commands.

(iii) If a multiengine airplane with the performance capability to execute a missed approach with one engine inoperative is used, one missed approach must be executed with an engine, which shall be the most critical engine, if applicable, set at idle or zero thrust before reaching the middle marker.

(iv) If a flight simulator is used, the missed approach must be executed with an engine, which shall be the most critical engine, if applicable, failed.

(v) For authorizations for aircraft that require a type rating, the test must be performed in coordination with a second in command who holds a type rating in the aircraft in which the authorization is sought.

(3) Oral questioning may be conducted at any time during the practical test.

(e) *Duration of authorization.*

(1) A Category II authorization expires at the end of the sixth month after it was last issued or renewed.

(2) Renewal of either a Category II authorization or a Category III authorization shall be considered Category II authorization renewal for each type aircraft for which an authorization is held, subject to the limitation of paragraph (e)(3) of this section.

(3) A renewal for any particular type aircraft shall not extend the expiration date of a Category II authorization for any other type aircraft.

(4) An authorization renewed in the month before expiration is considered to have been renewed in the month in which the authorization would have expired.

23. Section 61.68 is added to read as follows:

§ 61.68 Category III pilot authorization requirements.

(a) General. An applicant for a Category III pilot authorization must hold—

(1) A pilot certificate with an instrument rating or airline transport pilot certificate;

(2) A valid medical certificate;

(3) A category and class rating, for the aircraft for which the authorization is sought; and

(4) A type rating for the aircraft for which the authorization is sought, if that aircraft requires a type rating.

(b) *Experience requirements.* An applicant for a Category III authorization must have at least—

(1) 50 hours of night flight time as pilot in command;

(2) Except as provided in paragraph (c) of this section, 75 hours of instrument flight time during actual or simulated instrument conditions that may include not more than a combined total of 25 hours of simulated instrument flight time in qualified and approved flight simulators or qualified and approved flight training devices; and

(3) 250 hours of cross-country flight time as pilot in command.

(c) The instrument flight time allowed in flight simulators or flight training devices under paragraph (b)(2) of this section may be increased to not more than 40 hours if accomplished in an approved course conducted by a training center certificated under Part 142 of this chapter.

(d) *Practical test required.* (1) An applicant for a Category III authorization must pass a practical test, including both an oral and a flight increment—

(i) For issue of an authorization or renewal of an authorization; and

(ii) For the addition of another type aircraft to a previously held authorization.

(2) An applicant for a Category III authorization required by paragraph (d)(1) of this section must:

(i) Comply with the requirements of § 61.57(e) of this part.

(ii) Conduct at least six ILS approaches since the beginning of the sixth month before the practical test, which must be—

(A) Conducted under actual or simulated instrument flight conditions and flown down to the minimum altitude for the ILS approach;

(B) Accomplished in a flight simulator or flight training device that—

(*1*) Represents an aircraft of the same category and class of aircraft, and type of aircraft, as applicable, as the aircraft in which the authorization is sought; and

(*2*) Is used in accordance with an approved course conducted by a training center certificated under Part 142 of this chapter; or

(C) Accomplished in an aircraft of the same category and class of aircraft, and type of aircraft, as applicable, in which the practical test is to be conducted.

(D) Conducted down to the alert height or decision height, as applicable, authorized for Category III operations only if conducted in a qualified and approved flight simulator or qualified and approved flight training device.

(e) *Practical test procedures.* The practical test consists of two increments:

(1) Oral increment. The applicant must demonstrate knowledge of the following:

(i) Required landing distance.

(ii) Determination and recognition of the alert height or decision height, as applicable, including use of a radar altimeter.

(iii) Recognition of and proper reaction to significant failures encountered prior to and after reaching the alert height or decision height, as applicable.

(iv) Missed approach procedures and techniques using computed or fixed attitude guidance displays and expected height loss as they relate to manual go-around or automatic go-around and initiation altitude, as applicable.

(v) The use and limitations of RVR, including determination of controlling RVR and required transmissometers.

(vi) The use, availability, or limitations of visual cues and the altitude at which they are normally discernible at reduced RVR readings including—

(A) Unexpected deterioration of conditions to less than minimum RVR during approach, flare, and rollout;

(B) Demonstration of expected visual references with weather at minimum conditions; and

(C) The expected sequence of visual cues during an approach in which visibility is at or above landing minima.

(vii) Procedures and techniques for making a transition from instrument reference flight to visual flight during a final approach under reduced RVR.

(viii) Effects of vertical and horizontal wind shear.

(ix) Characteristics and limitations of the ILS and runway lighting system.

(x) Characteristics and limitations of the flight director system auto approach coupler (including split axis type if so equipped), auto throttle system, if applicable, and other Category III equipment, as applicable.

(xi) Assigned duties of the second in command during Category III approaches, unless the aircraft for which authorization is sought does not require a second in command.

(xii) Recognition of the limits of acceptable aircraft position and flight path tracking during approach, flare, and, if applicable, rollout.

(xiii) Recognition of, and reaction to, airborne or ground system faults or abnormalities, particularly after passing alert height or decision height, as applicable.

(2) Flight increment. The flight increment shall consist of the following:

(i) At least two ILS approaches to 100 feet AGL, including one landing and one missed approach initiated from a very low altitude that may result in a touchdown during the go-around maneuver.

(ii) All approaches must be made with the approved automatic landing system or an equivalent landing system approved by the Administrator.

(iii) If a multiengine aircraft with the performance capability to execute a missed approach with one engine inoperative is used, a missed approach shall be executed with an engine, which shall be the most critical engine, if applicable, set at idle or zero thrust before reaching the middle or outer marker.

(iv) If a flight simulator or flight training device is used, a missed approach must be executed with an engine, which shall be the most critical engine, if applicable, failed.

(v) Subject to the limitations of paragraph (e)(2)(vi) of this section, for Category IIIb operations predicated on the use of a fail-passive rollout control system, the test shall include at least one manual rollout using visual reference or a combination of visual and instrument references.

(vi) The maneuver required by paragraph (e)(2)(v) of this section shall be initiated by a fail-passive disconnect of the rollout control system—

(A) After main gear touchdown;

(B) Prior to nose gear touchdown;

(C) In conditions representative of the most adverse lateral touchdown displacement allowing a safe landing on the runway; and

(D) In weather conditions anticipated in Category IIIb operations.

(3) For authorizations for aircraft that require a type rating, the test must be performed in coordination with a second in command who holds a type rating in the aircraft in which the authorization is sought.

(4) Oral questioning may be conducted at any time during the practical test.

(f) Duration of authorization.

(1) A Category III authorization expires at the end of the sixth month after it was last issued or renewed.

(2) Renewal of a Category III authorization shall be considered an authorization renewal for each type aircraft for which an authorization is held, subject to the limitation of paragraph (f)(3) of this section.

(3) The renewal of a Category III authorization for any particular type aircraft shall not extend the expiration date for an authorization for any other type aircraft.

(4) An authorization renewed in the month before expiration is considered to have been renewed in the month the authorization expired.

24. Section 61.109 is revised to read as follows:

§ 61.109 Airplane rating: Aeronautical experience.

Except as provided in paragraph (i) of this section, an applicant for a private pilot certificate with an airplane category rating must have at least the following aeronautical experience:

(a) At least 20 hours of flight instruction from an authorized instructor, including at least—

(1) 3 hours of cross-country flight.

(2) 3 hours of flight at night, including ten takeoffs and ten landings for applicants seeking night flying privileges.

(3) 3 hours in airplanes in preparation for the private pilot practical test within 60 calendar days prior to that test.

(b) At least 20 hours of solo flight time, including at least—

(1) 10 hours of flight in airplanes;

(2) 10 hours of cross-country flight; and

(3) Three solo takeoffs and landings to a full stop at an airport with an operating control tower.

(c) Each flight required by paragraph (b)(2) of this section must include—

(1) A landing at a point more than 50 nautical miles from the original departure point; and

(2) One flight of at least 300 nautical miles with landings at a minimum of three points, one of which is at least 100 nautical miles from the original departure point.

(d) An applicant who does not meet the night flying requirement of paragraph (a)(2) of this section may be issued a private pilot certificate bearing the limitation "night flying prohibited."

(e) The limitation required by paragraph (d) of this section may be removed if the holder of the certificate shows that he or she has met the requirements of paragraph (a)(2) of this section.

(f) Except as provided in paragraph (g) of this section, a maximum of 2.5 hours of flight simulator instruction or flight training device instruction from an authorized instructor may be credited toward the total hours required by paragraph (a) of this section if the instruction is accomplished in a flight simulator or in a flight training device representing an airplane.

(g) A maximum of 5 hours of flight simulator instruction or flight training device instruction may be credited toward the total hours required by paragraph (a) of this section if the instruction is accomplished in an approved course conducted by a training center certificated under part 142 of this chapter.

(h) Flight simulator or flight training device instruction must be accomplished in a flight simulator, or in a flight training device, representing an airplane.

(i) Except as otherwise approved by the Administrator, an applicant for a private pilot certificate with an airplane rating who has satisfactorily completed an approved private pilot course conducted by a training center certificated under part 142 of this chapter must have a total of at least 35 hours of pilot flight time in aircraft, flight simulators, or flight training devices.

25. Section 61.113 is revised to read as follows:

§ 61.113 Rotorcraft rating: Aeronautical experience.

Except as provided in paragraph (e) of this section, an applicant for a private pilot certificate with a rotorcraft category rating must have at least the following aeronautical experience:

(a) For a helicopter class rating, 40 hours of flight instruction and solo flight time including at least—

(1) 20 hours of flight instruction from an authorized flight instructor, 15 hours of which must be in a helicopter, including—

(i) 3 hours of cross-country flying in helicopters;

(ii) 3 hours of night flying in helicopters, including 10 takeoffs and 10 landings, each of which must be separated by an en-route phase of flight;

(iii) 3 hours in helicopters in preparation for the private pilot practical test within 60 calendar days before that test;

(iv) A flight in a helicopter with a landing at a point other than an airport; and

(2) 20 hours of solo flight time, 15 hours of which must be in a helicopter, including at least—

(i) 3 hours of cross-country flying in helicopters, including one flight with a landing at three or more points, each of which must be more than 25 nautical miles from each of the other landing points; and

(ii) Three takeoffs and three landings in helicopters at airports or heliports with operating control towers, each separated by an en-route phase of flight.

(3) Except as provided in paragraph (a)(4) of this section, a maximum of 2.5 hours of flight simulator instruction or flight training device instruction from an authorized instructor may be credited toward the total hour requirement of paragraph (a) of this section if the instruction is accomplished in a flight simulator or in a flight training device representing a helicopter.

(4) A maximum of 5 hours of flight simulator instruction or flight training device instruction may be credited toward the total hours required by paragraph (a) of this section if the instruction is accomplished in a course conducted by a training center certificated under Part 142 of this chapter.

(b) The applicant for a gyroplane class rating must have a total of at least—

(1) 20 hours of flight instruction from an authorized flight instructor, 15 hours of which must be in a gyroplane, including at least the following—

(i) 3 hours of cross-country flying in gyroplanes;

(ii) 3 hours of night flying in gyroplanes, including ten takeoffs and ten landings; and

(iii) 3 hours in gyroplanes in preparation for the private pilot flight test within 60 calendar days before that test.

(2) 20 hours of solo flight time, 10 hours of which must be in a gyroplane, including—

(i) 3 hours of cross-country flying in gyroplanes, including one flight with a landing at three or more points, each of which must be more than 25 nautical miles from each of the other two points; and

(ii) Three takeoffs and three landings in gyroplanes at an airport with an operating control tower.

(3) Except as provided in paragraph (b)(4) of this section, a maximum of 2.5 hours of flight simulator instruction or flight training device instruction from an authorized instructor may be credited toward the total hours required by paragraph (b)(1) of this section if accomplished in a flight simulator or in a flight training device representing a gyroplane.

(4) A maximum of 5 hours of flight simulator or flight training device instruction may be credited toward the total hours required by paragraph (b)(1) of this section if the instruction is accomplished in an approved course conducted by a training center certificated under part 142 of this chapter.

(c) An applicant who does not meet the night flying requirements of paragraph (a)(1)(ii) or paragraph (b)(1)(ii) of this section will be issued a private pilot certificate bearing the limitation "night flying prohibited."

(d) The limitation required by paragraph (c) of this section may be removed if the holder of the certificate demonstrates compliance with the requirements of paragraph (a)(1)(ii) or paragraph (b)(1)(ii) of this section, as applicable.

(e) Except as otherwise approved by the Administrator, an applicant for a private pilot certificate with a rotorcraft category rating who has satisfactorily completed an approved private pilot course conducted by a training center certificated under part 142 of this chapter must have a total of at least 35 hours of pilot flight time in aircraft, flight simulators, or flight training devices.

26. Section 61.129 is amended by revising paragraph (b) introductory text and (b)(1) and (b)(2) introductory text, and by adding paragraphs (b)(4) and (c) to read as follows:

§ 61.129 Airplane rating: Aeronautical experience.

* * * * *

(b) *Flight time as pilot.* Except as provided in paragraph (c) of this section, an applicant for a commercial pilot certificate with an airplane rating must

have at least the following aeronautical experience:

(1) A total of at least 250 hours of flight time as a pilot that may include not more than—

(i) Except as provided in paragraph (b)(1)(ii) of this section, a maximum of 50 hours of flight simulator instruction or flight training device instruction from an authorized instructor may be credited toward the total hours required by paragraph (b) of this section; or

(ii) A maximum of 100 hours of flight simulator instruction or flight training device instruction may be credited toward the total hours required by paragraph (b) of this section if the instruction is accomplished in an approved course conducted by a training center certificated under part 142 of this chapter.

(2) The flight time required by paragraph (b)(1) of this section must include—

* * * * *

(4) Flight simulator instruction and flight training device instruction must be accomplished in a qualified and approved flight simulator or in a qualified and approved flight training device representing an airplane.

(c) Flight time as pilot: Approved commercial pilot training program conducted under part 142. Except as otherwise approved by the Administrator, an applicant for a commercial pilot certificate with an airplane rating who has satisfactorily completed an approved commercial pilot course conducted by a training center certificated under part 142 of this chapter must have a total of at least 190 hours of pilot flight time in aircraft, flight simulators, or flight training devices.

27. Section 61.131 is amended by revising the introductory text, paragraph (b) introductory text and (b)(1) introductory text, and by adding paragraphs (a)(3), (a)(4), (b)(3), (b)(4), and (c) to read as follows:

§ 61.131 Rotorcraft rating: Aeronautical experience.

Except as provided in paragraph (c) of this section, an applicant for a commercial pilot certificate with a rotorcraft category rating must have at least the following aeronautical experience:

(a) * * *

(3) Except as provided in paragraph (a)(4) of this section, a maximum of 35 hours of flight simulator instruction or flight training device instruction from an authorized instructor may be credited toward the total hour requirement for a pilot certificate.

(4) A maximum of 50 hours of flight simulator instruction or flight training device instruction may be credited toward the total hours required by paragraph (a)(1) of this section if the instruction is accomplished in an approved course conducted by an appropriately rated training center certificated under part 142 of this chapter.

(b) For a gyroplane class rating:

(1) An applicant must have at least 150 hours of flight time in aircraft, including at least 100 hours in powered aircraft, 25 hours of which must be in a gyroplane, including at least—

* * * * *

(3) Except as provided in paragraph (b)(4) of this section, a maximum of 35 hours of flight simulator instruction or flight training device instruction from an authorized instructor may be credited toward the total requirement for a pilot certificate if the instruction is accomplished in a flight simulator or in a flight training device representing a gyroplane.

(4) A maximum of 50 hours of flight simulator instruction or flight training device if instruction may be credited toward the total hours required by paragraph (b)(1) of this section if the instruction is accomplished in an approved course conducted by a training center certificated under part 142 of this chapter.

(c) Except as otherwise approved by the Administrator, an applicant for a commercial pilot certificate with a rotorcraft rating and a helicopter class rating who has satisfactorily completed an approved private pilot course conducted by a training center certificated under part 142 of this chapter must have a total of at least 150 hours of pilot flight time in aircraft, flight simulators, or flight training devices.

28. Section 61.155 is revised to read as follows:

§ 61.155 Airplane rating: Aeronautical experience.

(a) Except as provided in paragraph (d) of this section, an applicant for an airline transport pilot certificate with an airplane category and class rating must have at least 1,500 hours of total time as a pilot that includes at least:

(1) 500 hours of cross-country flight time;

(2) 100 hours of night flight time;

(3) 75 hours of instrument time in actual or simulated instrument time, subject to the following—

(i) Except as provided in paragraph (a)(3)(ii) of this section, an applicant may not receive more than 25 hours of simulated instrument time in flight simulators and flight training devices.

(ii) A maximum of 50 hours of flight simulator or flight training device instruction may be credited toward the total hours required by paragraph (a)(3) of this section if the instruction is accomplished in an approved course conducted by a training center certificated under part 142 of this chapter.

(iii) Flight simulator instruction or flight training device instruction must be accomplished in a qualified and approved flight simulator, or in a qualified and approved flight training device, representing an airplane.

(4) 250 hours of flight time in an airplane as a pilot in command or as a second in command performing the duties and functions of a pilot in command under the supervision of a pilot in command, or any combination thereof, which includes at least—

(i) 100 hours of cross-country flight time; and

(ii) 25 hours of night flight time.

(b) An applicant who has performed at least twenty night takeoffs and landings to a full stop may substitute each additional night takeoff and landing to a full stop in excess of the minimum twenty accomplished takeoffs for 1 hour of night flight time to satisfy the requirements of paragraph (a)(2) of this section, for a total credited time of no more than 25 hours.

(c) A commercial pilot may credit the following second-in-command and flight engineer flight time (or a combination of either crewmember position flight time) toward the 1,500 hours of total time as a pilot required by paragraph (a) of this section:

(1) All second-in-command time acquired in an airplane required to have more than one pilot by the airplane's flight manual or hype certificate;

(2) All second-in-command time acquired in an airplane for a part 121 or part 135 certificate holder for which a second in command is required.

(3) Flight engineer time, provided the time—

(i) Is acquired while operating under part 121 of this chapter;

(ii) Is acquired in an airplane that is required to have a flight engineer by the airplane's flight manual or type certificate;

(iii) Is acquired while the applicant is participating in a pilot training program approved under part 121 of this chapter; and

(iv) Does not exceed more than 1 hour of flight time to be credited for each 3 hours of flight engineer time, for a total credited time of no more than 500 hours.

(d) An applicant who does not meet the aeronautical experience requirements of the section may be issued an airline transport pilot

certificate with the limitation "Holder does not meet the pilot-in-command aeronautical experience requirements of ICAO" as prescribed by Article 39 of the Convention on International Civil Aviation, as provided in § 61.165(b) of this part.

29. Section 61.157 is amended by revising the section heading and paragraph (a) to read as follows:

§ 61.157 Airplane rating: Aeronautical skill (for Parts 121 and 135 use only).

(a) An applicant who is a pilot crewmember employee of an air carrier certificated under part 121 or part 135 of this chapter—

(1) When applying for an airline transport pilot certificate with a single-engine or multiengine class rating, or an additional type rating, must pass a practical test that includes the items set forth in appendix A of this part.

(2) The FAA inspector or designated examiner may modify any maneuver required by appendix A of this part, where necessary for the reasonable and safe operation of the airplane being used and, unless specifically prohibited in appendix A of this part, may combine any required maneuvers and may permit their performance in any convenient sequence.

* * * * *

30. Section 61.158 is added to read as follows:

§ 61.158 Airplane rating: Aeronautical skill (for other than Parts 121 and 135).

(a) *Practical test.* An applicant for an airline transport pilot certificate with a single engine or multiengine class rating or type rating, not applying as a pilot crewmember employee of an air carrier certified under part 121 or Part 135, must—

(1) Pass a practical test based on the following areas of operation:

(i) Preflight procedures.

(ii) Cockpit resource management.

(iii) Takeoff and departure maneuvers.

(iv) In-flight maneuvers.

(v) Instrument procedures.

(vi) Landings and approaches to landings.

(vii) Normal and abnormal procedures.

(viii) Emergency procedures.

(ix) Postflight procedures.

(2) Present a record of training certified by an authorized flight instructor showing that the applicant has—

(i) Received ground training on the aeronautical knowledge areas required by this section applicable to the aircraft category, class, and class rating sought;

(ii) Received flight training on the areas of operation applicable to the aircraft category, class, and type rating sought;

(iii) Been found competent by the certifying flight instructor in the aeronautical knowledge areas required for the added aircraft type rating; and

(iv) Been found competent by the certifying flight instructor in the areas of operation required for the added aircraft type rating.

(b) If the applicant does not hold an instrument rating, in addition to the tasks required by paragraph (a)(1) of this section, the applicant must also demonstrate competency in the operations required by § 61.65(g) of this part.

(c) The tasks required by paragraphs (a) and (b) of this section shall be performed in—

(1) An airplane of the same class, and, if applicable, an airplane of the same type, for which the class rating or type rating is sought; or

(2) Subject to the limitations of paragraph (c)(3) of this section, a flight simulator or a flight training device that represents the airplane type, for which the type rating is sought, or set of airplanes if the airplane for which the class rating is sought does not require a type rating.

(3) The flight simulator or flight training device use permitted by paragraph (c)(2) of this section shall be conducted in accordance with an approved course at a training center certificated under part 142 of this chapter; or

(4) In another manner approved by the Administrator.

31. Section 61.161 is amended by revising paragraph (b)(4) and by adding a new paragraph (b)(5) to read as follows:

§ 61.161 Rotorcraft rating: Aeronautical experience.

* * * * *

(b) * * *

(4) 75 hours of actual or simulated instrument time under actual or simulated conditions of which at least 50 hours are completed in flight with at least—

(i) 25 hours in helicopters as pilot in command;

(ii) 25 hours in helicopters as second in command performing the duties of a pilot in command under the supervision of a pilot in command; or

(iii) Any combination of paragraph (b)(4)(i) and (b)(4)(ii) of this paragraph that totals 25 hours in helicopters.

(5) Flight simulator or flight training device instruction may be credited toward the total hour requirement of paragraph (b)(4) of this section subject to the following:

(i) Flight simulator and flight training device instruction must be accomplished in a qualified and approved flight simulator or in a qualified and approved flight training device, representing a rotorcraft.

(ii) Except as provided in paragraph (b)(5)(iii) of this section, an applicant may receive credit for not more than a combined total of 25 hours of simulated instrument time in flight simulators and flight training devices.

(iii) A maximum of 50 hours of flight simulator instruction or flight training device instruction may be credited toward the total hours required by paragraph (b)(4) of this section if the instruction is accomplished in an approved course conducted by a training center certificated under part 142 of this chapter.

32. Section 61.163 is revised to read as follows:

§ 61.163 Rotorcraft rating: Aeronautical skill.

(a) *Practical test.* An applicant for an airline transport pilot certificate with a rotorcraft category and helicopter class rating or a type rating must pass a practical test based on the following areas of operation:

(1) Preflight procedures.

(2) Cockpit resource management.

(3) Takeoff and departure procedures.

(4) In-flight maneuvers.

(5) Instrument procedures.

(6) Landings and approaches to landings.

(7) Normal and abnormal procedures.

(8) Emergency procedures.

(9) Postflight procedures.

(b) If the applicant does not hold an instrument rating, in addition to the tasks required by paragraph (a) of this section, the applicant must also demonstrate competency in the operations required by § 61.65(g) of this part.

(c) The tasks required by paragraphs (a) and (b) of this section shall be performed in—

(1) The helicopter for which the class rating or type rating is sought; or

(2) A flight simulator or flight training device that represents the helicopter for which the class rating or type rating is sought.

(d) The flight simulator or flight training device use permitted by paragraph (c)(2) of this section must be conducted in accordance with an approved course by a training center certificated under part 142 of this chapter.

(e) Unless the Administrator requires certain or all tasks to be performed, the person authorized by the Administrator

to conduct the practical test for an airline transport pilot certificate may waive any of the tasks for which the Administrator approves waiver authority.

33. Section 61.169 is revised to read as follows:

§ 61.169 Instruction in air transportation service.

(a) An airline transport pilot may instruct—

(1) Other pilots in air transportation service in aircraft of the category, class, and type, as applicable, for which the airline transport pilot is rated;

(2) Only as provided in this section, unless the airline transport pilot also holds a flight instructor certificate, in which case he or she may exercise the instructor privileges of subpart G of part 61 for which he or she is rated; and

(3) Only in aircraft with functioning dual controls, when instructing under the provisions of this section.

(b) An airline transport pilot may not instruct—

(1) For more than 8 hours in 1 day;

(2) For more than 36 hours in any 7 consecutive day period; or

(3) In Category II or Category III operations unless the airline transport pilot has been trained and checked under Category II or Category III operations, as applicable.

34. Section 61.187 is amended by revising paragraph (a) to read as follows:

§ 61.187 Flight proficiency.

(a) An applicant for a flight instructor certificate must have received flight instruction in an aircraft, a flight simulator, or in a flight training device—

(1) Used in accordance with an approved course at a training center certificated under part 142 of this chapter; and

(2) Appropriate for the instructor rating sought in the subjects listed in this paragraph by a person authorized by paragraph (b) of this section to provide instruction to other flight instructors.

* * * * *

35. Section 61.191 is amended by revising paragraph (c) and adding a new paragraph (d) to read as follows:

§ 61.191 Additional flight instructor ratings.

* * * * *

(c) Pass the written and practical test prescribed in this subpart for the rating sought.

(d) If accomplished in accordance with an approved course conducted by a training center certificated under part 142 of this chapter, the practical test may be conducted in—

(1) An aircraft;

(2) A flight simulator; or

(3) A flight training device.

36. Section 61.195 is amended by adding paragraph (h) to read as follows:

§ 61.195 Flight instructor limitations.

* * * * *

(h) A flight instructor may not give instruction in Category II or Category III operations unless the flight instructor has been trained and checked in Category II or Category III operations, pursuant to § 61.67 of this part.

37. Section 61.197 is revised to read as follows:

§ 61.197 Renewal of flight instructor certificates.

(a) The holder of a valid flight instructor certificate may renew that certificate for an additional period of 24 calendar months if that individual—

(1) Except as provided by paragraph (a)(2) of this section, holds at least a valid third class medical certificate issued under part 67 of this chapter;

(2) For the renewal of a flight instructor-glider or flight instructor-free balloon rating only, certifies on the application for renewal that he or she does not have any known medical deficiencies; and

(3) Except as provided in paragraph (b) of this section, satisfactorily completes a practical test for—

(i) Renewal of the flight instructor certificate and rating sought; or

(ii) An additional flight instructor rating.

(b) The holder of a flight instructor certificate may renew that certificate and its ratings without accomplishing a practical test, by presenting to an FAA Flight Standards District Office evidence of one of the following—

(1) A record showing that during the preceding 24 calendar months, the instructor has—

(i) Endorsed at least five students for a practical test for a certificate or rating; and

(ii) At least an 80 percent pass rate for students passing their practical test on the first attempt;

(2) A record showing that, during the preceding 24 calendar months, the instructor served—

(i) As a company check pilot;

(ii) As a chief flight instructor;

(iii) As a company check airman, or flight instructor in a part 121 or part 135 operation; or

(iv) In a comparable position involving the regular evaluation of pilots, providing that the FAA Flight Standards District Office with jurisdiction—

(A) Is acquainted with the instructor's duties and responsibilities; and

(B) Has determined that the instructor has satisfactory knowledge of current pilot training, certification, and standards; or

(3) A graduation certificate from an approved flight instructor refresher course, provided—

(i) The course was completed prior to the expiration date of the flight instructor certificate;

(ii) The course consists of not less than 24 hours of ground training or flight training, or both; and

(c) An applicant for renewal of a flight instructor certificate must show that the method of renewal described in paragraph (b)(3) of this section has not been used for more than two consecutive renewals.

(d) If an instructor satisfactorily completes the requirements of this section within 90 days prior to the expiration date of the flight instructor certificate, the instructor is considered to have completed the requirements of this section in the month in which they are due, and the certificate will be renewed for an additional 24 calendar months beyond the expiration date.

(e) The practical test required by paragraph (a)(3) of this section may be conducted in an aircraft, a flight simulator, or a flight training device, if accomplished in an approved course conducted by a training center certificated under part 142 of this chapter.

38. Appendix A to part 61 is amended by revising the title to read as follows:

Appendix A to Part 61—Practical Test Requirements for Airplane Airline Transport Pilot Certificates and Associated Class and Type Ratings (for Parts 121 and 135 Use Only)

39. Appendix B to part 61 is removed and reserved.

PART 91—GENERAL OPERATING AND FLIGHT RULES

40. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 thorough 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 *et seq.*; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

41. Section 91.191 is revised to read as follows:

§ 91.191 Category II and Category III manual.

(a) Except as provided in paragraph (c) of this section, no person may operate a U.S.-registered civil aircraft in a Category II or a Category III operation unless—

(1) There is available in the aircraft a current and approved Category II or Category III manual, as appropriate, for that aircraft;

(2) The operation is conducted in accordance with the procedures, instructions, and limitations in each respective manual; and

(3) The instruments and equipment listed in the manual that are required for a particular Category II or Category III operation have been inspected and maintained in accordance with the maintenance program contained in the manual.

(b) Each operator must keep a current copy of each approved manual at its principal base of operations and must make each manual available for inspection upon request by the Administrator.

(c) This section does not apply to operations conducted by a holder of a certificate issued under part 121 or part 135 of this chapter.

42. Section 91.205 is amended by revising paragraph (f) and adding new paragraphs (g) and (h) to read as follows:

§ 91.205 Powered civil aircraft with standard category U.S. airworthiness certificates: Instrument and equipment requirements.

* * * * *

(f) *Category II and Category III operations.* The requirements for Category II operations are the instruments and equipment specified in—

(1) Paragraph (d) of this section; and

(2) Appendix A to this part.

(g) The instruments and equipment required for Category III operations are specified in paragraph (d) of this section.

(h) This paragraph does not apply to operations conducted by a holder of a certificate issued under part 121 or part 135 of this chapter.

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT.

43. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1356, 1357, 1401, 1421–1430, 1472, 1485, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

44. Section 121.1 is amended by revising (c)(2), and adding new (c)(4) to read as follows:

§ 121.1 Applicability.

(c) * * *

(2) Until (2 years after the effective date of Part 142), each person who applies for provisional approval of an Advanced Qualification Program curriculum, curriculum segment, or portion of a curriculum segment under SFAR No. 58 and each person employed or used by an air carrier or commercial operator under this part to perform training, qualification, or evaluation functions under an Advanced Qualification Program under SFAR No. 58; and

(3) * * *

(4) Except as provided in paragraph (c)(2) of this section, each person, including those persons employed or used by that person who provides training, checking, or qualification functions under contract or other arrangement for air carrier and commercial operator crewmembers, aircraft dispatchers, other operations personnel, instructors, and check airmen.

* * * * *

45. Section 121.400 is amended by revising paragraph (a) and by adding paragraphs (c)(7), (c)(8), and (c)(9) to read as follows:

§ 121.400 Applicability and terms used.

(a) This subpart prescribes the requirements applicable to—

(1) Each training center that performs training, testing, and checking functions by contract or other arrangement for certificate holders subject to the requirements of this part;

(2) Each certificate holder for establishing and maintaining a training program for crewmembers, aircraft dispatchers, and other operations personnel employed or used by that certificate holder; and

(3) Each certificate holder for the qualification, approval, and use of flight simulators and flight training devices in the conduct of the program.

(b) * * *

(c) * * *

(7) *Training center.* An organization governed by the applicable requirements of part 142 of this chapter that provides training, testing, and checking services under contract or other arrangement to certificate holders subject to the requirements of this part.

(8) *Facility.* The physical environment required to conduct training, testing, and checking activities; e.g., buildings, classrooms.

(9) *Courseware.* Instructional material developed for each curriculum. This is the information in lesson plans, flight event descriptions, computer software programs, workbooks, and handouts.

46. Section 121.401 is amended by revising paragraphs (a)(2), (a)(3), (a)(4), and (c).

§ 121.401 Training Program: General.

(a) * * *

(2) Provide or ensure that an eligible training center provides adequate ground and flight training facilities and properly qualified ground instructors for the training required by this subpart;

(3) Provide and keep current or ensure that an eligible training center provides and keeps current with respect to each airplane type and, if applicable, the particular variations within that airplane type, appropriate training material, examinations, forms, instructions, and procedures for use in conducting the training and checks required by this part; and

(4) Provide or ensure that an eligible training center provides enough flight instructors, simulator instructors, and approved check airmen (evaluators under part 142) to conduct required flight training and flight checks, and simulator training courses permitted under this part.

(b) * * *

(c) Each instructor, supervisor, or check airman, including each instructor or evaluator under part 142 of this chapter, who is responsible for a particular ground training subject, segment of flight training, course of training, flight check, or competence check under this part shall certify as to the proficiency and knowledge of the crewmember, aircraft dispatcher, flight instructor, or check airman concerned upon completion of that training or check. That certification shall be made a part of the crewmember's or dispatcher's record. When the certification required by this paragraph is made by an entry in a computerized recordkeeping system, the certifying instructor, supervisor, check airman, or Part 142 instructor or evaluator must be identified with that entry; however, the signature of the certifying instructor, supervisor, check airman, or Part 142 instructor or evaluator is not required for computerized entries.

* * * * *

47. Section 121.402 is added to read as follows:

§ 121.402 Training program: Special rules.

(a) A training center is eligible under this subpart to provide training, testing, and checking services under contract or

other arrangement to those persons subject to the requirements of this subpart provided—

(1) It holds applicable ratings and training specifications issued under part 142 of this chapter;

(2) It has facilities, training equipment, and courseware meeting the applicable requirements of part 142 of this chapter;

(3) It has approved curriculums, curriculum segments, and portions of curriculum segments applicable for use in training courses required by this subpart; and

(4) It has sufficient instructor and evaluator (check airmen) personnel qualified either under the applicable requirements of Part 142 of this chapter or under the applicable requirements of §§ 121.411 or 121.413 of this part to provide training, testing, and checking services to persons subject to the requirements of this subpart.

48. Section 121.403 is amended by revising paragraph (b)(4) as follows:

§ 121.403 Training program: Curriculum.

* * * * *

(b) * * *

(4) A list of airplane simulators or other training devices approved under § 121.407 and § 142.97 of this chapter, including approvals for particular maneuvers, procedures, or functions.

* * * * *

49. Section 121.405 is amended by revising paragraph (b) to read as follows:

§ 121.405 Training program and revision: Initial and final approval.

* * * * *

(b) If the proposed training program or revision complies with this subpart, the Administrator grants initial approval in writing after which the certificate holder may conduct or arrange to conduct the training in accordance with that program. The Administrator then evaluates the effectiveness of the training program and advises the certificate holder of deficiencies, if any, that must be corrected.

* * * * *

50. Section 121.407 is amended by revising the section heading and paragraphs (c)(1) and (d) as follows:

§ 121.407 Training program: Approval of flight simulators and other training devices.

(c) * * *

(1) Is approved under this section or § 142.97 of this chapter and meets the simulator requirements of Appendix H of this part; and

* * * * *

(d) A flight simulator approved under this section or § 142.97 of this chapter must be used instead of the airplane to satisfy the pilot flight training requirements prescribed in the certificate holder's approved low-altitude windshear flight training program set forth in § 121.409(d) of this part.

51. Section 121.431 is amended by revising paragraph (a) to read as follows:

§ 121.431 Applicability.

(a) This subpart:

(1) Prescribes crewmember qualifications for all certificate holders except where otherwise specified; and

(2) Permits training center personnel under § 121.402 of this part to provide testing and checking services under contract or other arrangement to those persons subject to the requirements of this subpart.

* * * * *

52. Section 121.432a is added to read as follows:

§ 121.432a Training, testing, and checking conducted by certificated training centers: Special rules.

A crewmember who has successfully completed training, testing, or checking in accordance with an approved training program that meets the requirements of this subpart, including Appendixes E and F of this part, as appropriate, and that is conducted in accordance with an approved course conducted by an appropriately rated training center certificated under part 142 of this chapter, is considered to meet applicable part 121 requirements.

53. Section 121.439 is amended by revising paragraphs (a), (b)(1), and (e) as follows:

§ 121.439 Pilot qualification: Recent experience.

(a) No certificate holder may use any person nor may any person serve as a required pilot flight crewmember unless, within the preceding 90 days, that person has made at least three takeoffs and three landings in the type airplane in which that person is to serve. The takeoffs and landings required by this paragraph may be performed in a Level A flight simulator approved under § 121.407 or § 142.97 of this chapter to include takeoff and landing maneuvers. In addition, any person who fails to make the three required takeoffs and landings within any consecutive 90-day period must reestablish recency of experience as provided in paragraph (b) of this section.

(b) * * *

(1) Under the supervision of a check airman or an evaluator under § 121.402 of this part, make at least three takeoffs and three landings in the type airplane in which that person is to serve or in an advanced flight simulator or Level A simulator. When a Level A simulator is used, the requirements of paragraph (c) of this section must be met.

* * * * *

(e) A check airman or an evaluator under § 121.402 of this part, whichever is applicable, who observes the takeoffs and landings prescribed in paragraphs (b)(1) and (c) of this section, shall certify that the person being observed is proficient and qualified to perform flight duty in operations under this part and may require any additional maneuvers that are determined necessary to make this certifying statement.

54. Section 121.441 is amended by revising (b)(2) as follows:

§ 121.441 Proficiency checks.

* * * * *

(b) * * *

(2) It must be given by the Administrator, an authorized check pilot check airman, or an authorized pilot evaluator under § 121.402 of this part.

* * * * *

55. Appendix H to part 121 is amended by revising the introductory text and paragraphs (3), (4), and (5) following the undesignated center heading reading "ADVANCED SIMULATION TRAINING PROGRAM" to read as follows:

Appendix H To Part 121—Advanced Simulation Plan

* * * * *

ADVANCED SIMULATION TRAINING PROGRAM

For an operator to conduct Phase II or III training under this Appendix, all required simulator instruction and checks must be conducted under an advanced simulation training program which is approved by the Administrator for the operator. This program must also ensure that all instructors, check airmen, and instructors and evaluators under § 121.402 of this part used in appendix H training and checking are highly qualified to provide the training required in the training program. The advanced simulation training program shall include the following:

* * * * *

3. Unless otherwise authorized by the Administrator, for newly certificated air operators under part 119 of this chapter and newly certificated training centers under part 142 of this chapter, documentation that each instructor, check airman, and evaluator under § 121.402 has been employed by the certificate holder or training center, as applicable, for at least 1 year in that

capacity or as a pilot in command or second in command in an airplane of the group in which that pilot is instructing or checking.

4. A procedure to ensure that each instructor, check airman, and evaluator under § 121.402 actively participates in either an approved regularly scheduled line-flying program as a flight crewmember or an approved line-observation program in the same airplane type for which that person is instructing or checking.

5. A procedure to ensure that each instructor, check airman, and evaluator under § 121.402, is given a minimum of 4 hours of training each year to become familiar with the operator's advanced simulation training program, or changes to it, and to emphasize their respective roles in the program. Training for simulator instructors, check airmen, and § 121.402 evaluators shall include training policies and procedures, instruction methods and techniques, operation of simulator controls (including environmental and trouble panels), limitations of the simulator, and minimum equipment required for each course of training.

* * * * *

56. Appendix I to Part 121 is amended by revising paragraph III(c) to read as follows:

Appendix I To Part 121—Drug Testing Program

* * * * *

III. Employees who must be tested.

* * * * *

(c) Flight instruction, simulated flight instruction, or ground instruction duties.

* * * * *

PART 125—CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE

57. The authority citation for part 125 continues to read as follows:

Authority: 49 U.S.C. 1354, 1421 through 1430, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

58. Section 125.285 is amended by revising the first two sentences of paragraph (a) and paragraph (c) introductory text to read as follows:

§ 125.285 Pilot qualifications: Recent experience.

(a) No certificate holder may use any person, nor may any person serve, as a required pilot flight crewmember unless within the preceding 90 calendar days that person has made at least three takeoffs and landings in the type airplane in which that person is to serve. The takeoffs and landings required by this paragraph may be performed in a flight simulator if the flight simulator is qualified and approved by the Administrator for such purpose. * * *

(b) * * *

(c) A required pilot flight crewmember who performs the maneuvers required by paragraph (b) of this section in a qualified and approved flight simulator, as prescribed in paragraph (a) of this section, must—

* * * * *

59. Section 125.296 is added to read as follows:

§ 125.296 Training, testing, and checking conducted by training centers: Special rules.

A crewmember who has successfully completed training, testing, or checking in accordance with an approved training program that meets the requirements of this part and that is conducted in accordance with an approved course conducted by an appropriately rated training center certificated under part 142 of this chapter, is considered to meet applicable requirements of this part.

60. Section 125.297 is amended by revising the section heading and paragraph (a) and (b) introductory text to read as follows:

§ 125.297 Approval of flight simulators and flight training devices.

(a) Flight simulators and flight training devices approved by the Administrator may be used in training, testing, and checking required by this subpart.

(b) Each flight simulator and flight training device that is used in training, testing, and checking required under this subpart must be used in accordance with an approved training course conducted by an appropriately rated training center certificated under part 142 of this chapter, or meet the following requirements:

* * * * *

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

61. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355(a), 1421 through 1431, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

62. Section 135.1 is amended by revising paragraph (a)(4) and adding a new paragraph (a)(6) to read as follows:

§ 135.1 Applicability.

(a) * * *

(4) Until [2 years after the effective date of the final rule], each person who applies for provisional approval of an Advanced Qualification Program curriculum, curriculum segment, or portion of a curriculum under SFAR No. 58 and each person employed or used by an air carrier or commercial operator under this part to perform training, qualification, or evaluation functions under an Advanced Qualification Program under SFAR No. 58; and

(5) * * *

(6) Except as provided in paragraph (a)(4) of this section, each person, including those persons employed or used by that person, who provides training, checking, or qualification functions under contract or other arrangement for air carrier and commercial operator crewmembers, other operations personnel, instructors, and check airmen.

* * * * *

63. Section 135.291 is revised to read as follows:

§ 135.291 Applicability.

This subpart:

(a) Prescribes the tests and checks required for pilot and flight attendant crewmembers and for the approval of check pilots in operations under this part; and

(b) Permits training center personnel under § 135.324 of this part to provide testing and checking services under contract or other arrangement to those persons subject to the requirements of this subpart.

64. Section 135.292 is added to read as follows:

§ 135.292 Training and checking conducted by certificated training centers: Special rules.

A crewmember who has successfully completed training, testing, or checking in accordance with an approved training program that meets the requirements of this part and that is conducted in accordance with an approved course conducted by an appropriately rated training center certificated under part 142 of this chapter, is considered to meet applicable part 135 requirements.

65. Section 135.293 is amended by revising paragraph (a) introductory text to read as follows:

§ 135.293 Initial and recurrent pilot testing requirements.

(a) No certificate holder may use a pilot, nor may any person serve as a pilot, unless, since the beginning of the 12th calendar month before that service, that pilot has passed a written or oral test, given by the Administrator, an authorized check pilot, or a pilot evaluator authorized under § 135.324 of

this part, on that pilot's knowledge in the following areas—

* * * * *

66. Section 135.297 is amended by revising paragraph (a) to read as follows:

§ 135.297 Pilot in command: Instrument proficiency check requirements.

(a) No certificate holder may use a pilot, nor may any person serve as a pilot in command of an aircraft under IFR unless, since the beginning of the 6th calendar month before that service, that pilot has passed an instrument proficiency check under this section administered by the Administrator, an authorized check pilot, or a pilot evaluator, under § 135.324 of this part.

* * * * *

67. Section 135.299 is amended by revising paragraph (a)(1) to read as follows:

§ 135.299 Pilot in command: Line checks: Routes and airports.

(a) * * *

(1) Be given by the Administrator, an approved check pilot, or a pilot evaluator authorized under § 135.324 of this part.

* * * * *

68. Section 135.321 is amended by revising paragraph (a) and by adding paragraph (b)(7), (b)(8), and (b)(9) to read as follows:

§ 135.321 Applicability and terms used.

(a) This subpart prescribes the requirements applicable to—

(1) Each training center that performs training, testing, and checking functions by contract or other arrangement for certificate holders subject to the requirements of this part;

(2) Each certificate holder for establishing and maintaining an approved training program for crewmembers, check airmen and instructors, and other operations personnel employed or used by that certificate holder; and

(3) Each certificate holder for the qualification, approval, and use of aircraft simulators and other training devices in the conduct of the program.

(b) * * *

(7) *Training center.* An organization governed by the applicable requirements of part 142 of this chapter that provides training, testing, and checking services under contract or other arrangement to certificate holders subject to the requirements of this part.

(8) *Facility.* The physical environment required to conduct training, testing, and checking activities; e.g., buildings, classrooms.

(9) *Courseware.* Instructional material developed for each curriculum. This is the information in lesson plans, flight event descriptions, computer software programs, workbooks, and handouts.

69. Section 135.323 is amended by revising paragraphs (a)(2), (a)(3), (a)(4), and (c) to read as follows:

§ 135.323 Training program: General.

(a) * * *

(2) Provide or ensure that an eligible training center provides adequate ground and flight training facilities and properly qualified ground instructors for the training required by this subpart;

(3) Provide and keep current or ensure that an eligible training center provides and keeps current with respect to each airplane type and, if applicable, the particular variations within that aircraft type, appropriate training material, examinations, forms, instructions, and procedures for use in conducting the training and checks required by this part; and

(4) Provide or ensure that an eligible training center provides enough flight instructors, simulator instructors, and approved check airmen (evaluators under part 142) to conduct required flight training and flight checks, and simulator training courses permitted under this part.

(b) * * *

(c) Each instructor, supervisor, or check airman, including each instructor or evaluator under part 142 of this chapter, who is responsible for a particular ground training subject, segment of flight training, course of training, flight check, or competence check under this part shall certify as to the proficiency and knowledge of the crewmember, aircraft dispatcher, flight instructor, or check airman concerned upon completion of that training or check. That certification shall be made a part of the crewmember's or dispatcher's record. When the certification required by this paragraph is made by an entry in a computerized recordkeeping system, the certifying instructor, supervisor, check airman, or part 142 instructor or evaluator must be identified with that entry. However, the signature of the certifying instructor, supervisor, check airman, or part 142 instructor or evaluator is not required for computerized entries.

* * * * *

70. Section 135.324 is added to read as follows:

§ 135.324 Training program: Special rules.

A training center is eligible under this subpart to provide training, testing, and checking services under contract or other arrangement to those persons subject to the requirements of this subpart provided—

(a) It holds applicable ratings and training specifications issued under part 142 of this chapter;

(b) It has facilities, training equipment, and courseware meeting the applicable requirements of part 142 of this chapter;

(c) It has approved curriculums, curriculum segments, and portions of curriculum segments applicable for use in training courses required by this subpart; and

(d) It has sufficient instructor and evaluator (check airmen) personnel qualified either under the applicable requirements of part 142 of this chapter or under the applicable requirements of §§ 135.337 or 135.339 of this part to provide training, testing, and checking services to persons subject to the requirements of this subpart.

71. Section 135.325 is amended by revising paragraph (b) to read as follows:

§ 135.325 Training program and revision: Initial and final approval.

* * * * *

(b) If the proposed training program or revision complies with this subpart, the Administrator grants initial approval in writing after which the certificate holder may conduct or arrange to conduct the training in accordance with that program. The Administrator then evaluates the effectiveness of the training program and advises the certificate holder of deficiencies, if any, that must be corrected.

* * * * *

72. Section 135.327 is amended by adding paragraph (b)(4) to read as follows:

§ 135.327 Training program: Curriculum.

* * * * *

(b) * * *

(4) A list of aircraft simulators or other training devices approved under §§ 135.335 and 142.97 of this chapter, including approvals for particular maneuvers, procedures, or functions.

PART 141—PILOT SCHOOLS

73. The authority citation for part 141 continues to read as follows:

Authority: Secs. 313(a), 314, 601, 602, and 607 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1355, 1421, 1422, and 1427), and Sec. 6(c) of the Dept. of Transportation Act (49 U.S.C. 1655(c)).

74. Section 141.26 is added to read as follows:

§ 141.26 Training agreements.

A training center certificated under part 142 of this chapter may provide the training, testing, and checking for pilot schools certificated under part 141 of this chapter and is considered to meet the requirements of part 141 provided—

(a) There is a training agreement between the certificated training center and the pilot school;

(b) The training, testing, and checking provided by the certificated training center is approved and conducted under part 142;

(c) The pilot school certificated under part 141 obtains the Administrator's approval for a training course outline that includes the training, testing, and checking to be conducted under part 141 and the training, testing, and checking to be conducted under part 142; and

(d) Upon completion of the training, testing, and checking conducted under part 142, a copy of each student's training record is forwarded to the part 141 school and becomes part of the student's permanent training record.

75. Part 142 is added to read as follows:

PART 142—TRAINING CENTERS

Subpart A—General

Subpart B—Aircrew Curriculum, Training Course Outline and Syllabus [Other Than Air Carrier and Part 125]

Subpart C—Personnel and Flight Training Equipment Requirements [Other Than Air Carrier and Part 125]

Subpart D—Operating Rules [Other Than Air Carrier and Part 125]

Subpart E—Recordkeeping [Other Than Air Carrier and Part 125]

Subpart F—Aircrew Curriculum, Training Course Outline, and Syllabus [Air Carrier and Part 125]

Subpart G—Personnel and Flight Training Equipment Requirements [Air Carrier and Part 125]

Subpart H—Operating Rules [Air Carrier and Part 125]

Subpart I—Recordkeeping [Air Carrier and Part 125]

Subpart J—Other Approved Courses

Authority: Sections 313(a), 314, 601, 602, and 607 of the Federal Aviation Act of 1958 (49 U.S.C. app. 1354(a), 1355, 1421, 1422, and 1427), and Section 6(c) of the Department of Transportation Act (49 U.S.C. app. 1655(c)).

PART 142—TRAINING CENTERS

Subpart A—General

§ 142.1 Applicability.

(a) This subpart prescribes the requirements governing the certification and operation of aviation training centers. Except as provided in paragraph (b) of this section, this rule provides an alternative means to accomplish training required by parts 61, 63, 121, 125, 127, 135, and 137 of this chapter.

(b) Certification under this part is not required for training that is—

(1) Approved under the provisions of parts 63, 121, 125, 127, 135, and 137 for an operator's own employees;

(2) Approved under SFAR 58, Advanced Qualification Programs, for the applicant's own employees; or

(3) Conducted under part 61 unless that part requires certification under this part.

§ 142.3 Definitions.

As used in this part:

Core Training Program means a set of courses approved by the Administrator, for use by a training center and its satellite training centers. The core training program includes training for tasks and circumstances common to all training center users but does not include training for tasks and circumstances unique to a particular user.

Course means—

(a) A program of instruction to obtain pilot certification, qualification, authorization, or currency;

(b) A program of instruction to meet a specified number of requirements of a program for pilot training, certification, qualification, authorization, or currency; or

(c) A curriculum, or curriculum segment, as defined in SFAR 58 of this chapter.

Courseware means instructional material developed for each course or curriculum, including lesson plans, flight event descriptions, computer software programs, audiovisual programs, workbooks, and handouts.

Evaluator means a person employed by a training center certificate holder who performs tests for certification and rating that are authorized by the certificate holder's training specification, and who is authorized by the Administrator to administer such checks and tests.

Flight Training Equipment means flight simulators, as defined in § 61.1(a) of this chapter, flight training devices, as

defined in § 61.1(a) of this chapter, and aircraft.

Instructor means a person employed by a training center and authorized to provide instruction in accordance with Subpart C or Subpart G of this part.

Line-Oriented Flight Training (LOFT) means simulation conducted using operational-oriented flight scenarios that accurately replicate interaction among flightcrew members and between flightcrew members and dispatch facilities, other crewmembers, air traffic control (ATC), and ground operations. LOFT simulations are conducted for training and evaluation purposes and include random, abnormal, and emergency occurrences.

Specialty Training Program means a set of courses approved by the Administrator for use by a particular training center or satellite training center, including training requirements and functions unique to one or more training center clients which are in addition to the core training program training requirements and functions common to all training center clients.

Training Center means an organization certificated under this part to provide aviation training.

Training Program Curriculum means a set of courses that comprise a training center's training program. The training program may consist of a core training program, or a core training program and a specialty training program.

Training Specifications means a document issued to a training center certificate holder by the Administrator that prescribes that center's training, checking, and testing authorizations and limitations, and specifies training program requirements.

§ 142.5 Certificate and training specifications required.

(a) No person may operate a certificated training center without, or in violation of, a training center certificate and training specifications issued under this part.

(b) An applicant will be issued a training center certificate and training specifications with appropriate limitations if the applicant shows that adequate facilities, equipment, personnel, and courseware required by § 142.13 of this part are available to conduct training approved under §§ 142.37 or 142.77 of this part.

§ 142.7 Duration of a certificate.

(a) A training center certificate issued under this part is effective until the certificate is surrendered or until the Administrator suspends, revokes, or terminates it.

(b) If the Administrator suspends, revokes, or terminates a training center certificate, the holder of that certificate shall return the certificate to the Administrator.

§ 142.9 Deviations or waivers.

(a) Deviations or waivers from any of the requirements of this part may be approved only by the Administrator.

(b) A training center applicant requesting a deviation or waiver under this section must provide the Administrator with information acceptable to the Administrator that shows—

(1) Justification for the deviation or waiver; and

(2) That the deviation or waiver will not adversely affect the quality of instruction or evaluation.

§ 142.11 Training center ratings.

A training center certificate holder may obtain a rating to conduct training to meet the requirements of part 61, part 63, part 121, part 125, part 127, part 135, or part 137 of this chapter.

§ 142.13 Application for issuance or amendment.

(a) An application for a training center certificate and training specifications shall—

(1) Be made on a form and in a manner prescribed by the Administrator;

(2) Be filed with the FAA Flight Standards District Office that has jurisdiction over the area in which the applicant's principal business office is located; and

(3) Be made at least 120 calendar days before the beginning of any proposed training or 60 calendar days before effecting an amendment to any approved training, unless a shorter filing period is approved by the Administrator.

(b) Each application for a training center certificate and training specification shall provide—

(1) For each management position, the minimum qualification requirements for each position necessary to comply with the training specifications;

(2) A statement acknowledging that the applicant shall notify the Administrator within 10 working days of any change made in the assignment of persons in the required management positions;

(3) The proposed training authorizations and ratings requested by the applicant;

(4) The proposed evaluation authorization;

(5) A description of the flight training equipment proposed to be used;

(6) A description of the applicant's training facilities, equipment, qualifications of personnel to be used, and proposed evaluation plans;

(7) A training program curriculum, including syllabi, outlines, courseware, procedures, and documentation to support the items required in subpart B or subpart F of this part;

(8) A description of a recordkeeping system that will identify and document the details of training, qualification, and certification of students, instructors, and evaluators;

(9) A description of quality control measures proposed; and

(10) A method of demonstrating the applicant's qualification and ability to provide training for a certificate or rating in fewer than the minimum hours prescribed in part 61 of this chapter if the applicant proposes to do so.

(c) The facilities and equipment described in paragraph (b)(6) of this section shall be in place at the location of the proposed training center for inspection by the Administrator at the time the application required under paragraph (a) of this section is submitted.

(d) An applicant who meets the requirements of this part and is approved by the Administrator is entitled to—

(1) A training center certificate containing all business names included on the application under which the certificate holder may conduct operations and the address of each business office used by the certificate holder; and

(2) Training specifications, issued by the Administrator to the training center certificate holder, containing—

(i) The type of training authorized, including—

(A) Training center ratings; and

(B) Approved courses;

(ii) The category and class of aircraft that may be used for training;

(iii) Registration numbers and types of aircraft that are—

(A) Subject to an airworthiness maintenance program required by parts 91, 121, 125, 135, or any other part of this chapter; and

(B) Suitable for the type of training, testing, or checking being conducted;

(iv) For each flight simulator or flight training device, the make, model, and series of airplane or the set of airplanes being simulated and the qualification level assigned, or the make, model, and series of rotorcraft, or set of rotorcraft being simulated and the qualification level assigned;

(v) For each flight simulator and flight training device subject to qualification

evaluation by the National Simulator Program Manager, the serial number assigned by the manufacturer;

(vi) The name and address of all satellite training centers, and the approved courses offered at each satellite training center;

(vii) Authorized deviations or waivers from this part; and

(viii) Any other items the Administrator may require or allow.

(e) The Administrator may deny, suspend, revoke, or terminate a certificate under this part if the Administrator finds that—

(1) Any certificate the Administrator previously issued to the applicant for, or holder of, a training center certificate, was revoked, suspended or terminated within the previous 5 years;

(2) An applicant for, or holder of, a training center certificate employs or proposes to employ a person who—

(i) Was previously employed in a management or supervisory position;

(ii) Exercised control over any certificate holder whose certificate has been revoked, suspended, or terminated within the last 5 years; and

(iii) Contributed materially to the revocation, suspension, or termination of that certificate and who will be employed in a management or supervisory position, or who will be in control of or have a substantial ownership interest in the training center.

(3) The information required to be provided by this part by the applicant for, or holder of, a training center certificate is incomplete, inaccurate, fraudulent, or false;

(4) The applicant for, or holder of, a training center certificate has violated any provision of § 142.21 of this part; or

(5) The issuance or continuance of such certificate would not foster aviation safety.

(f) At any time, the Administrator may amend a training center certificate—

(1) On the Administrator's own initiative, under Section 609 of the Federal Aviation Act of 1958 (49 U.S.C. 1429), as amended, and part 13 of this chapter; or

(2) Upon timely application by the certificate holder.

(g) The certificate holder must file an application to amend a training center certificate at least 60 calendar days prior to the applicant's proposed effective amendment date unless a different filing period is approved by the Administrator.

§ 142.15 Management and personnel requirements.

An applicant for a training center certificate must show that—

(a) For each proposed course of training, the training center has, and shall maintain, a sufficient number of instructors who are qualified in accordance with subpart C or subpart G of this part, as applicable, to perform the duties to which they are assigned;

(b) The training center has, and shall maintain, a sufficient number of approved evaluators to provide required checks and tests to graduation candidates within 7 calendar days of training completion for any curriculum leading to airman certificates or ratings, or both;

(c) The training center has, and shall maintain, a sufficient number of management personnel who are qualified and competent to perform required duties; and

(d) A management representative, and all personnel who are to conduct direct student training, are able to understand, read, write, and fluently speak the English language.

§ 142.17 Facilities.

(a) An applicant for, or holder of, a training center certificate shall ensure that—

(1) Each room, training booth, or other space used for instructional purposes is heated, lighted, and ventilated to conform to local building, sanitation, and health codes; and

(2) The facilities used for instruction are not routinely subject to significant distractions from flight operations and maintenance operations at the airport.

(b) An applicant for, or holder of, a training center certificate shall establish and maintain a principal business office that—

(1) Has a mailing address in the name shown on its training center certificate application, or training center certificate, after it is issued; and

(2) Has facilities adequate to maintain the records required by this part.

(3) Is not shared with another certificate holder; however, automated recordkeeping systems approved by the Administrator may be shared by more than one training center or certificate holder.

(c) The principal business office address may not be a Post Office box.

(d) An applicant for, or holder of, a training center certificate must have exclusive use, at a location approved by the Administrator, of adequate flight training equipment and courseware appropriate for the training to be conducted.

(e) A training center certificate may be issued to an applicant having a business office or training center located outside the United States.

§ 142.19 Satellite training centers.

(a) The holder of a training center certificate may conduct training in accordance with an approved training program at a satellite training center if—

(1) The facilities, equipment, personnel, and course content of the satellite training center meet the applicable requirements of this part;

(2) The instructors and evaluators at the satellite training center are under the direct supervision of management personnel approved for each training course;

(3) The Administrator is notified in writing that a particular satellite is to begin operations at least 60 days prior to proposed commencement of operations at the satellite training center; and

(4) The training center certificate holder's training specifications reflect the name and address of the satellite training center and the approved courses offered at the satellite training center.

(b) The training center certificate holder's training specifications shall prescribe the operations required and authorized at each satellite training center.

§ 142.20 Foreign training centers: Special rules.

(a) A training center or satellite training center may be located outside the United States only if it is in a location approved by the Administrator.

(b) A training center or satellite training center located outside the United States is permitted to issue certificates to United States citizens and to add ratings and endorsements to FAA-issued certificates to the extent authorized and approved by the Administrator.

§ 142.21 Prohibited drugs.

(a) An applicant for, or holder of, a training center certificate may not knowingly permit any aircraft owned or leased by that applicant or holder to be engaged in any operation that is in violation of § 91.12(a) of this chapter.

(b) The following requirements apply to persons who perform a function listed in appendix I to part 121 of this chapter for the training center certificate holder, including persons who perform such a function pursuant to a contract with the training center certificate holder:

(1) No training center certificate holder may knowingly use any person to perform, nor may any person perform for a training center certificate holder, either directly or by contract, any function listed in appendix I to part 121 of this chapter while that person has a prohibited drug, or drug metabolite, as

defined in appendix I, in his or her system.

(2) Except as provided in paragraph (c) of this section, no training center certificate holder may knowingly use any person to perform, nor may any person perform for a training center certificate holder, either directly or by contract, any function listed in appendix I to part 121 of this chapter if that person has failed a test or has refused to submit to a test that is required by that appendix and that is given by a training center certificate holder.

(c) Paragraph (b)(2) of this section does not apply to a person who has received—

(1) A recommendation to be hired or to return to duty from a Medical Review Officer in accordance with appendix I to part 121 of this chapter; or

(2) A special issuance medical certificate after evaluation by the Federal Air Surgeon for drug dependency in accordance with part 67 of this chapter.

§ 142.23 Testing for prohibited drugs.

(a) Each training center certificate holder must test each of its employees who performs a function listed in appendix I to part 121 of this chapter in accordance with that appendix.

(b) No training center certificate holder may use a contractor to perform a function listed in appendix I to part 121 of this chapter unless that contractor tests each employee performing that function for the training center certificate holder in accordance with that appendix.

§ 142.25 Refusal to submit to a drug test.

(a) Each training center certificate holder must conduct drug testing for each of its employees who performs a function listed in appendix I to part 121 of this chapter.

(b) A certificate holder may not employ any person who refuses to take a drug test as required by paragraph (a) of this section. Refusal to take a drug test is grounds for termination of authority to perform the functions listed in part 121, appendix I, of this chapter.

(c) Refusal to take a drug test, as required in paragraph (b) of this section, means refusal to take a drug test when requested by—

(1) The training center certificate holder;

(2) A local law enforcement officer under his or her own authority; or

(3) An FAA inspector, under the circumstances specified in appendix I to part 121 of this chapter.

§ 142.27 Display of certificate.

(a) Each holder of a training center certificate must prominently display that certificate in a place accessible to the public in the principal business office of the training center.

(b) A training center certificate and training specifications must be made available for inspection upon request by—

(1) The Administrator;

(2) An authorized representative of the National Transportation Safety Board; or

(3) Any Federal, State, or local law enforcement agency.

§ 142.29 Inspections.

Each training center certificate holder must allow the Administrator to inspect training center personnel, facilities, equipment, and records at any reasonable time and in any reasonable place in order to determine compliance with or to determine initial or continuing eligibility under the Federal Aviation Act of 1958, as amended, the Federal Aviation Regulations, and the training center's certificate and training specifications.

§ 142.31 Advertising limitations.

(a) A training center certificate holder may not conduct, and may not advertise to conduct, any training that is not approved by the Administrator.

(b) A training center certificate holder whose certificate has been surrendered, suspended, revoked, or terminated must—

(1) Promptly remove all indications, including signs, wherever located, that the training center was certificated by the Administrator; and

(2) Promptly notify all advertising agents, or advertising media, or both, employed by the training center certificate holder to cease all advertising indicating that the training center is certificated by the Administrator.

§ 142.33 Training agreements.

A pilot school certificated under part 141 of this chapter may provide training, testing, and checking for a training center certificated under this part if—

(a) There is a training, testing, and checking agreement between the certificated training center and the pilot school;

(b) The training, testing, and checking provided by the certificated pilot school is approved and conducted in accordance with this part;

(c) The pilot school certificated under part 141 obtains the Administrator's approval for a training course outline that includes the portion of the training, testing, and checking to be conducted under part 141; and

(d) Upon completion of training, testing, and checking conducted under part 141, a copy of each student's training record is forwarded to the part 142 training center and becomes part of the student's permanent training record.

Subpart B—Aircrew Curriculum, Training Course Outline, and Syllabus [Other Than Air Carrier and Part 125]

§ 142.35 Applicability.

This subpart prescribes the curriculum and course outline requirements for the issuance of a training center certificate and ratings for training, testing, and checking conducted to meet the requirements of part 61 of this chapter.

§ 142.37 Approval of flight aircrew training program.

(a) Each applicant for, or holder of, a training center certificate must apply to the Administrator for training program curriculum approval.

(b) Application for training program curriculum approval shall be made in a form and in a manner acceptable to the Administrator.

(c) Each application for training program curriculum approval must indicate—

(1) Which courses of the training program curriculum are part of the core training program and which courses are part of the specialty training program;

(2) Which requirements of part 61 would be satisfied by the training program curriculum; and

(3) Which requirements of part 61 would not be satisfied by the training program curriculum.

(d) If, after a training center certificate holder begins operations under an approved training program curriculum, the Administrator finds that the certificate holder is not meeting the provisions of its approved training program, the Administrator may require the certificate holder to make revisions to that training program.

(e) If the Administrator requires a training center certificate holder to make revisions to an approved training program curriculum and the certificate holder does not make those required revisions, the Administrator may suspend, revoke, or terminate the training center certificate under the provisions of § 142.13(e) of this part.

§ 142.39 Training program curriculum requirements.

Each training program curriculum submitted to the Administrator for approval must meet the applicable

requirements of this part and must contain—

(a) A syllabus and course outline for each proposed course of training;

(b) Minimum aircraft and flight training equipment requirements for each proposed course of training;

(c) Minimum instructor and evaluator qualifications for each proposed course of training;

(d) A training program curriculum for initial authorization and continuing authorization of each instructor or evaluator employed to instruct in a proposed course of training; and

(e) For each training program that provides for the issuance of a certificate or rating in fewer than the minimum hours prescribed by part 61 of this chapter for training, testing, and checking conducted under part 142 of this chapter—

(1) A means of demonstrating the ability to reduce the minimum hours prescribed in part 61 of this chapter for training, testing, and checking conducted under part 142 of this chapter; and

(2) A means of tracking student performance.

Subpart C—Personnel and Flight Training Equipment Retirements [Other Than Air Carrier and Part 125]

§ 142.45 Applicability.

This subpart prescribes the personnel and flight training equipment requirements for a part 142 training center certificate holder that are required for training that is applied toward the requirements of part 61 of this chapter.

§ 142.47 Training center instructor eligibility requirements.

(a) A training center may not employ a person as an instructor unless that person—

(1) Is at least 18 years of age;

(2) Is able to read, write, and converse fluently in English; and

(3) Except as provided in paragraph (b) of this section—

(i) Holds a current flight instructor certificate and at least a commercial pilot certificate with an instrument rating or Airline Transport Pilot (ATP) certification;

(ii) Is currently qualified to instruct under part 121 or Part 135 of this chapter at the time of accepting employment; or

(iii) Holds a ground instructor certificate with an instrument rating and meets at least the aeronautical experience requirements in § 61.129(b) or § 61.131(a) of this chapter for either an airplane or rotorcraft rating, respectively, except for the required hours of instruction in preparation for the commercial pilot practical test.

(b) A training facility operating under an exemption to part 61 prior to [the effective date of the final rule] may allow a person who has been employed as a simulator instructor for that training facility to continue to instruct provided the training facility—

(1) Is certificated under this part;

(2) Assures that the person:

(i) Maintains continuous employment with the training center after it is certificated under this Part; and

(ii) Instructs only in qualified and approved flight simulators in which that person has been authorized by the Administrator to instruct within the 12 months immediately preceding certification of the employing training center.

§ 142.49 Training center instructor privileges and limitations.

(a) A part 142 certificate holder may not allow an instructor to provide instruction in any course of training, testing, or checking for which that instructor is qualified unless that instructor is qualified under the requirements of this subpart.

(b) A training center, whose instructor is authorized in accordance with the requirements of this subpart to conduct training, testing, or checking in a qualified and approved flight simulator or in a qualified and approved flight training device, may allow its instructor to give endorsements required by part 61 of this chapter if that instructor is authorized by the Administrator to instruct in a part 142 course of training that requires such endorsements.

(c) A training center may not allow an instructor to—

(1) Conduct more than 8 hours of instruction in any 24 consecutive hour period;

(2) Provide flight simulator or flight training device instruction unless that instructor meets the requirements of §§ 142.51, 142.53 (a)(1) through (a)(4), and 142.53(b) of this part, as applicable; or

(3) Provide flight instruction in an aircraft unless that instructor—

(i) Meets the requirements of § 142.53 (a)(1), (a)(2), and (a)(5) of this part;

(ii) Is qualified and authorized in accordance with subpart G of part 61 of this chapter;

(iii) Holds certificates and ratings specified by part 61 of this chapter appropriate to the category, class, and type aircraft in which instructing;

(iv) Holds at least a valid second class medical certificate; and

(v) Meets the currency requirements of part 61 of this chapter.

§ 142.51 Qualifications to instruct in a flight simulator or a flight training device.

A training center certificate holder must ensure that—

(a) Except as required by paragraph (b) of this section, each instructor who instructs in a qualified and approved flight simulator or flight training device that represents an airplane meets the aeronautical experience requirements of § 61.129 of this chapter, except for the required hours of instruction in preparation for the commercial pilot practical test; or

(b) Each instructor meets the aeronautical experience requirements of § 61.155 of this chapter, if instructing—

(1) In a qualified and approved flight simulator or flight training device that represents an airplane requiring a type rating;

(2) In a course of training that permits the issuance of an ATP certificate with an airplane category rating; or

(3) In a course which permits the addition of an airplane category rating to an existing ATP certificate.

(c) Except as required by paragraph (d) of this section, each instructor who instructs in a qualified and approved flight simulator or flight training device that represents a rotorcraft, meets the applicable aeronautical experience requirements of § 61.131 of this chapter, except for the required hours of instruction in preparation for the commercial pilot practical test; or

(d) Each instructor meets the aeronautical experience requirements of § 61.161 of this chapter, if the instructor—

(1) Instructs in a qualified and approved flight simulator that represents a rotorcraft requiring a type rating;

(2) Instructs in a course of training leading to the issuance of an ATP certificate with a rotorcraft category rating; or

(3) Instructs in a course which permits the addition of a rotorcraft category rating to an existing ATP certificate.

§ 142.53 Training center instructor training and testing requirements.

(a) Prior to authorization to instruct a course of training, testing, and checking, and except as provided in paragraph (c) of this section, every 12 calendar months beginning the first day of the month following an instructor's initial authorization, a training center certificate holder must ensure that each of its instructors meet the following requirements:

(1) Each instructor must satisfactorily demonstrate to an authorized evaluator knowledge of, and proficiency in, instructing each course of training for

which that instructor is authorized to instruct under this part.

(2) Each instructor must satisfactorily complete an approved course of ground instruction in at least—

(i) The fundamental principles of the learning process;

(ii) Elements of effective teaching, instruction methods, and techniques;

(iii) Instructor duties, privileges, responsibilities, and limitations;

(iv) Training policies and procedures;

(v) Cockpit resource management and crew coordination; and

(vi) Evaluation.

(3) Each instructor who instructs in a qualified and approved flight simulator or flight training device must satisfactorily complete an approved course of flight simulator training and an approved course of ground instruction applicable to the training courses the instructor is authorized to instruct.

(4) The course required by paragraph (a)(3) of this section must include—

(i) Proper operation of flight simulator and flight training device controls and systems;

(ii) Proper operation of environmental and fault panels;

(iii) Limitations of the flight simulator or flight training device; and

(iv) Minimum equipment requirements for each course of training.

(5) Each flight instructor who provides training in an aircraft must satisfactorily complete an approved course of ground instruction and flight training in an aircraft, flight simulator, or flight training device.

(6) The approved course of ground instruction and flight training required by paragraph (a)(5) of this section must include instruction in—

(i) Performance and analysis of flight training procedures and maneuvers applicable to the training courses that the instructor is authorized to instruct;

(ii) Technical subjects covering aircraft subsystems and operating rules applicable to the training courses that the instructor is authorized to instruct;

(iii) Emergency operations; and

(iv) Emergency situations likely to develop during training and appropriate safety measures.

(b) In addition to the requirements of paragraphs (a)(1) through (a)(6) of this section, each training center certificated under this part must ensure that each instructor who instructs in a qualified and approved flight simulator in an advanced simulation training program has met the following requirements:

(1) Except as provided in paragraph (b)(2) of this section, the instructor must have performed 2 hours in flight that includes three takeoffs and three landings as the sole manipulator of the controls of an aircraft of the same category and class, and, if a type rating is required, of the same type replicated by the qualified and approved flight simulator in which that instructor is authorized to instruct.

(2) An instructor who is unable to hold a medical certificate may not instruct in a qualified and approved flight simulator that represents an airplane requiring two flight crewmembers unless that instructor has—

(i) Participated in an approved line observation program under part 121 or part 135 of this chapter, in the same airplane type as the airplane represented by the qualified and approved flight simulator in which that instructor is authorized to instruct; or

(ii) Participated in an in-flight observation training course, that includes at least three takeoffs and three landings, and that—

(A) Consists of at least 2 hours in an airplane of the same class and, if a type rating is required, of the same type, as the airplane replicated by the qualified and approved flight simulator in which that instructor is authorized to instruct; and

(B) Includes performing at least 1 hour of LOFT as the sole manipulator of the controls in a flight simulator that replicates an aircraft of the same class and, if a type rating is required, of the same type as the aircraft represented by the qualified and approved flight simulator in which that instructor is authorized to instruct.

(c) An instructor who satisfactorily completes a course of training required by paragraph (a) or (b) of this section in the calendar month before or after the month in which it is due is considered to have taken it when due, and future authorization due dates do not change.

§ 142.55 Training center evaluator requirements.

(a) In order to authorize a person as an evaluator, a training center must ensure that the person—

(1) Is approved by the Administrator;

(2) Is in compliance with §§ 142.47, 142.49, 142.51 and 142.53 of this part; and

(3) Prior to authorization, and except as provided in paragraph (b) of this section, every 12-calendar-month period following initial authorization satisfactorily completes a course of training provided by the training center that includes the following:

(i) Pilot evaluator duties, functions, and responsibilities;

(ii) Methods, procedures, and techniques for conducting required checks;

(iii) Evaluation of pilot performance; and

(iv) Management of unsatisfactory checks and subsequent corrective action.

(b) An instructor who satisfactorily completes a course of training required by paragraph (a) of this section in the calendar month before or the calendar month after the month in which it is due is considered to have taken it when due, and future authorization due dates do not change.

§ 142.57 Aircraft requirements.

(a) An applicant for, or holder of, a training center certificate must ensure that each aircraft used for flight instruction and solo flights meets the following requirements:

(1) The aircraft must be registered as a civil aircraft of the United States if it is operated in the United States by a training center or satellite training center located in the United States.

(2) The aircraft must meet the aircraft registration requirements of the country in which it is operated, if it is operated outside the United States by a training center or satellite training center located outside the United States.

(3) Except for flight instruction and solo flights in a course of training for agricultural aircraft operations, external load operations, and similar aerial work operations, the aircraft must have—

(i) An FAA standard airworthiness certificate if it is operated in the United States by a training center or satellite training center located in the United States; or

(ii) A foreign equivalent of an FAA standard airworthiness certificate if it is operated outside the United States by a training center or by a satellite training center located outside the United States.

(4) The aircraft must be maintained and inspected in accordance with—

(i) The requirements of part 91, subpart E, of this chapter; and

(ii) An approved program for maintenance and inspection.

(5) The aircraft must be equipped and maintained for IFR operations if it is to be used for IFR en route operations or for instrument approaches, or both.

(6) The aircraft must be equipped as provided in the approved course for which it is used, if it is used for instruction in the control of an aircraft by reference to instruments.

(b) Except as provided in paragraph (c) of this section, an applicant for, or holder of, a training center certificate must ensure that each aircraft used for flight instruction is at least a two-place aircraft with engine power controls and flight controls that are easily reached

and that operate in a conventional manner from both pilot stations.

(c) Airplanes with controls such as nose-wheel steering, switches, fuel selectors, and engine air flow controls that are not easily reached and operated in a conventional manner by both pilots may be used for flight instruction if the training center certificate holder determines that the flight instruction can be conducted in a safe manner considering the location of controls and their nonconventional operation, or both.

§ 142.59 Flight simulators and flight training devices.

(a) An applicant for, or holder of, a training center certificate must show that each flight simulator and flight training device used for training, testing, and checking is specifically qualified and approved by the Administrator for—

(1) Each maneuver and procedure for the make, model, and series of aircraft or set of aircraft simulated, as applicable; and

(2) Each training program curriculum or training course in which the flight simulator or flight training device is to be used.

(b) The approval required by paragraph (a)(2) of this section must include—

(1) The set of aircraft, or type aircraft; and, if applicable,

(2) The particular variation within type, for which the training, testing, or checking is being conducted; and

(3) The particular maneuver, procedure, or crewmember function to be performed.

(c) Each qualified and approved flight simulator or flight training device used by a training center must—

(1) Be maintained to ensure the performances, functions, and all other characteristics that were required for approval;

(2) Be modified to conform with any modification to the airplane being simulated if the modification results in changes to performance, function, or other characteristics required for approval;

(3) Be given a functional preflight check before being used; and

(4) Have a discrepancy log in which the instructor or evaluator, at the end of each training session, enters each discrepancy.

(d) Unless otherwise authorized by the Administrator, all components on a qualified and approved flight simulator or flight training device used by a training center must be operative.

(e) Training centers shall not be restricted to specific—

(1) Route segments during LOFT scenarios; and

(2) Visual data bases replicating a specific customer's bases of operation.

(f) Training centers may request evaluation, qualification, and continuing evaluation for qualification of flight simulators and flight training devices without—

(1) Holding an air carrier certificate or

(2) Having a specific relationship to an air carrier certificate holder.

Subpart D—Operating Rules [Other Than Air Carrier and Part 125]

§ 142.61 Applicability.

This subpart prescribes the operating rules applicable to a training center certificated under this part and operating a course or training program curriculum approved in accordance with subpart B of this part.

§ 142.63 Privileges.

A training center certificated under this part may employ flight simulator instructors and evaluators who meet recency of experience requirements through the use of a qualified and approved flight simulator or flight training device, if the qualified and approved flight simulator or flight training device is used in a course approved in accordance with subpart B or subpart F of this part, as applicable.

§ 142.65 Limitations.

(a) A training center certificate holder shall ensure that a flight simulator or flight training device freeze, slow motion, or repositioning feature is not used during testing, checking, or LOFT.

(b) When flight testing, flight checking, or LOFT is being conducted, the training center certificate holder must ensure that:

(1) Except as provided by paragraph (b) (2) of this section, a crewmember qualified in the aircraft category, class, and type, if a type rating is required, occupies each crewmember position; or

(2) A student enrolled in a specific course for training, checking, testing, or LOFT occupies each required crewmember position for those functions in that course without holding the pilot certificates and ratings necessary to qualify for that crewmember position.

(c) The holder of a training center certificate may not recommend a trainee for a certificate or rating, unless the trainee—

(1) Has satisfactorily completed the training specified in the course approved under § 142.37 of this part; and

(2) Has passed the final tests required by § 142.37 of this part.

(d) The holder of a training center certificate may not graduate a student from a course unless the student has satisfactorily completed the curriculum requirements of that course.

Subpart E—Recordkeeping [Other Than Air Carrier and Part 125]

§ 142.71 Applicability.

This subpart prescribes the training center recordkeeping requirements for trainees enrolled in a course, and instructors and evaluators authorized to instruct a course, approved in accordance with subpart B of this part.

§ 142.73 Recordkeeping requirements.

(a) A training center certificate holder must maintain a record for each trainee that contains—

(1) The name of the trainee;

(2) A copy of the trainee's pilot certificate and medical certificate;

(3) The name of the course and the make and model of flight training equipment used;

(4) The trainee's prerequisite experience and course time completed;

(5) The trainee's performance on each lesson and the name of the instructor providing instruction;

(6) The date and result of each end-of-course practical test and the name of the evaluator conducting the test; and

(7) The number of hours of additional training that was accomplished after any unsatisfactory practical test.

(b) A training center certificate holder shall maintain a record for each instructor or evaluator authorized to instruct a course approved in accordance with subpart B of this part that indicates that the instructor or evaluator has complied with the requirements of §§ 142.13, 142.45, 142.47, 142.49, 142.51, and 142.53 of this chapter, as applicable.

(c) The certificate holder shall maintain the records required by paragraphs (a) and (b) of this section for at least 1 year following the completion of required training for each trainee, instructor, and evaluator.

(d) The certificate holder must provide to the Administrator, upon request and at a reasonable time and in a reasonable place, the records required by paragraphs (a) and (b) of this section.

(e) The certificate holder shall provide to a trainee, upon request and at a reasonable time, a copy of his or her training records.

Subpart F—Aircrew Curriculum, Training Course Outline, and Syllabus [Air Carrier and Part 125]

§ 142.75 Applicability.

This subpart prescribes the curriculum and course outline requirements for the issuance of a training center certificate and ratings for training conducted to meet the requirements of part 63, part 121, part 125, or part 135 of this chapter.

§ 142.77 Approval of flight aircrew training program.

(a) Each applicant for, or holder of, a training center certificate must apply to the Administrator for training program curriculum approval.

(b) Application for training program curriculum approval shall be made in a form and in a manner acceptable to the Administrator.

(c) Each application for training program curriculum approval must—

(1) Indicate which courses of the training program curriculum are part of the core training program and which courses are part of the specialty training program;

(2) Indicate which requirements of part 61, part 63, part 121, part 125, or part 135, as applicable, would be satisfied by the training program curriculum; and

(3) Indicate which requirements of part 61, part 63, part 121, part 125, or part 135, as applicable, would not be satisfied by the training program curriculum.

(d) If, after a training center certificate holder begins operations under an approved training program curriculum, the Administrator finds that the training center certificate holder does not meet the provisions of its approved training program, the Administrator may require that the training center certificate holder make appropriate revisions to its training program.

(e) If the Administrator requires a training center certificate holder to make revisions to an approved training program curriculum and the certificate holder does not make those required revisions, the Administrator may suspend, revoke, or terminate the training center certificate under the provisions of 142.13(e) of this part.

§ 142.79 Approval of training, qualification, or evaluation by a training center.

(a) Each training program curriculum submitted to the Administrator for approval must meet the applicable requirements of this part and, for each proposed course of training, contain—

(1) A syllabus and course outline;

(2) Minimum flight training equipment requirements that identify the specific make, model, and series aircraft (or variant) and crewmember position for which the course is designed;

(3) Minimum instructor and evaluator qualifications; and

(4) A training program curriculum for initial authorization and continuing qualification of each instructor or evaluator employed to instruct that course.

(b) For each course designed to meet requirements of part 121, part 125, or part 135 of this chapter, a training center certificate holder must ensure that—

(1) The Administrator has approved the training center's—

(i) Facilities for planned training, qualification, or evaluation required by part 121 or part 135 of this chapter;

(ii) Training program curriculum, or course, for use by each air carrier certificate holder, or operator under Part 125 of this chapter for whom it is to be used; and

(2) Each air carrier certificate holder, or operator under part 125 of this chapter, that has contracted for training with the training center certificate holder, has—

(i) Notified the Administrator of its intent to use a training program curriculum, or course, approved under part 142 of this chapter; and

(ii) Submitted the notification required by paragraph (b)(2)(i) of this section, in writing, at least 30 days prior to the date that training for that air carrier certificate holder or operator is scheduled to commence.

(c) If the Administrator requires modification of an approved training program curriculum or course to ensure that the curriculum or course is suitable for a specific air carrier certificate holder's training program requirements, the training center certificate holder must make the required modification.

Subpart G—Personnel and Flight Training Equipment Requirements [Air Carrier and Part 125]

§ 142.83 Applicability.

This subpart prescribes the personnel and flight training equipment requirements for a training center certificate holder engaged in training for a part 121 or part 135 certificate holder, or an operator under part 125 of this chapter.

§ 142.85 Training center instructor eligibility requirements.

(a) A training center may not employ a person as an instructor unless that person—

(1) Is at least 18 years of age;

(2) Is able to read, write, and converse fluently in English; and

(3) Except as provided in paragraph (b) of this section—

(i) Is currently qualified to instruct under Part 121 or Part 135 of this chapter at the time of accepting employment; or

(ii) Holds a ground instructor certificate with an instrument rating and meets at least the aeronautical experience requirements in §§ 61.129(b) or 61.131(a) of this chapter for either an airplane rating, if instructing in a simulator representing an airplane, or rotorcraft rating, if instructing in a simulator representing a rotorcraft, except for the required hours of instruction in preparation for the commercial pilot practical test.

(b) A training center operating under an exemption to part 61 of this chapter before [the effective date of the final rule] may allow a person who has been employed as a simulator instructor for that training center to continue to instruct provided the training center—

(1) Is certificated under this part;

(2) Assures that the person—

(i) Maintains continuous employment with the training center after it is certificated under this part; and

(ii) Instructs only in qualified and approved flight simulators and flight training devices in which that instructor has previously been authorized by the Administrator to instruct within the 12 months immediately preceding certification of the employing training center.

§ 142.87 Training center instructor privileges and limitations.

(a) A part 142 certificate holder may allow an instructor to instruct each course of training, testing, and checking conducted under this part for which that instructor is qualified in accordance with the requirements of this subpart.

(b) A training center certificated under this part may allow an instructor authorized in accordance with the requirements of this subpart to conduct training, testing, and checking in a qualified and approved flight simulator or flight training device to give endorsements required by part 61 of this chapter, if that instructor is authorized to instruct in a part 142 course which requires such endorsements.

(c) A training center certificated under this part may not allow an instructor to:

(1) Conduct more than 8 hours of instruction in any 24 consecutive hour period.

(2) Provide flight simulator or flight training device instruction unless that instructor meets the requirements of §§ 142.89 and 142.91(a)(1) through (a)(4) of this part.

(3) Provide flight instruction in an aircraft unless that instructor meets the requirements of paragraphs § 142.91 (a)(1), (a)(2), and (a)(5) of this part.

(4) Notwithstanding the provisions of part 121 and part 135 of this chapter, provide flight instruction in an aircraft unless that instructor—

(i) Holds at least a valid second class medical certificate issued under part 67 of this chapter;

(ii) Holds the appropriate certificates and ratings specified by subpart G of part 61 of this chapter; and

(iii) Meets the currency requirements of part 61 of this chapter; or

(iv) As applicable to the instruction being provided, meets the requirements of § 121.411 or § 135.339 of this chapter;

(5) Provide instruction in a training center training program established under subpart F of this part for an air carrier unless—

(i) The instructor holds an airman certificate and ratings required to serve as a pilot in command, or flight engineer, as appropriate to the instruction, in the type aircraft in which he or she will instruct;

(ii) The instructor completes an initial, transition, recurrent, or differences flight training course, as appropriate, within the preceding 12 months;

(iii) The instructor has been trained and qualified to instruct in the courses of the training program curriculum that he or she will instruct;

(iv) The FAA has approved the training program curriculum for use in accordance with subpart F of this part; and

(v) The training center has notified the air carrier certificate holder's Principal Operations Inspector (POI) that the instructor is providing instruction for the air carrier.

§ 142.89 Qualifications to instruct in a flight simulator or a flight training device.

A training center certificate holder must ensure that—

(a) Except as required by paragraph (b) of this section, each instructor who instructs in a qualified and approved flight simulator or flight training device that represents an airplane meets the aeronautical experience requirements of § 61.129 of this chapter, except for the required hours of instruction in preparation for the commercial pilot practical test; or

(b) Each instructor meets the aeronautical experience requirements of § 61.155 of this chapter, if instructing—

(1) In a qualified and approved flight simulator or flight training device that represents an airplane requiring a type rating;

(2) In a course of training that permits the issuance of an ATP certificate with an airplane category rating; or

(3) In a course which permits the addition of an airplane category rating to an existing ATP certificate.

(c) Except as required by paragraph (d) of this section, each instructor who instructs in a qualified and approved flight simulator or flight training device that represents a rotorcraft, meets the applicable aeronautical experience requirements of § 61.131 of this chapter, except for the required hours of instruction in preparation for the commercial pilot practical test; or

(d) Each instructor meets the aeronautical experience requirements of § 61.161 of this chapter, if the instructor—

(1) Instructs in a qualified and approved flight simulator that represents a rotorcraft requiring a type rating;

(2) Instructs in a course of training leading to the issuance of an ATP certificate with a rotorcraft category rating; or

(3) Instructs in a course which permits the addition of a rotorcraft category rating to an existing ATP certificate.

§ 142.91 Training center instructor training and testing requirements.

(a) Prior to authorization to instruct a course of training, testing, and checking, and except as provided in paragraph (c) of this section, every 12 calendar months beginning the first day of the month following an instructor's initial authorization, a training center certificate holder must ensure that each of its instructors meet the following requirements:

(1) Each instructor must satisfactorily demonstrate to an authorized evaluator knowledge of, and proficiency in, instructing each course of training for which that instructor is authorized to instruct under this part.

(2) Each instructor must satisfactorily complete an approved course of ground instruction in at least—

(i) The fundamental principles of the learning process;

(ii) Elements of effective teaching, instruction methods, and techniques;

(iii) Instructor duties, privileges, responsibilities, and limitations;

(iv) Training policies and procedures;

(v) Cockpit resource management and crew coordination; and

(vi) Evaluation.

(3) Each instructor who instructs in a qualified and approved flight simulator or flight training device, must satisfactorily complete an approved course of flight simulator training and ground training applicable to the courses that the instructor is authorized to instruct.

(4) The course required by paragraph (a)(3) of this section must include—

(i) Proper operation of flight simulator and flight training device controls and systems;

(ii) Proper operation of environmental and fault panels;

(iii) Limitations of the flight simulator or flight training device; and

(iv) Minimum equipment requirements for each course of training.

(5) Each flight instructor who provides training in an aircraft must satisfactorily complete an approved course of ground instruction and flight training in an aircraft, flight simulator, or flight training device.

(6) The approved course of ground instruction and flight training required by paragraph (a)(5) of this section must include instruction in—

(i) Performance and analysis of flight training procedures and maneuvers applicable to the training courses that the instructor is authorized to instruct;

(ii) Technical subjects covering aircraft subsystems and operating rules applicable to the training courses that the instructor is authorized to instruct;

(iii) Emergency operations; and

(iv) Emergency situations likely to develop during training and appropriate safety measures.

(b) In addition to the requirements of paragraphs (a)(1) through (a)(6) of this section, each training center certificate holder must ensure that each instructor who instructs in a qualified and approved Level C or Level D flight simulator has met the following requirements:

(1) Except as provided in paragraph (b)(2) of this section, the instructor must have performed 2 hours in flight including three takeoffs and three landings as the sole manipulator of the controls of an aircraft of the same category and class, and, if a type rating is required, of the same type replicated by the qualified and approved flight simulator in which that instructor is authorized to instruct.

(2) An instructor who is unable to hold a medical certificate may not instruct in a qualified and approved flight simulator that represents an airplane requiring two flight crewmembers unless that instructor has participated in—

(i) An approved line observation program under part 121 or part 135 of this chapter, in the same airplane type as the airplane represented by the qualified and approved flight simulator in which that instructor is authorized to instruct; or

(ii) An in-flight observation training course, that includes at least three takeoffs and three landings, and that—

(A) Consists of at least 2 hours in an airplane of the same class and, if a type rating is required, of the same type, as the airplane replicated by the qualified and approved flight simulator in which that instructor is authorized to instruct; and

(B) Includes performing at least 1 hour of LOFT as the sole manipulator of the controls in a flight simulator that replicates an airplane of the same class and, if a type rating is required, of the same type as the qualified and approved flight simulator in which that instructor is authorized to instruct.

(c) An instructor who satisfactorily completes a course of training required by paragraph (a) or (b) of this section in the calendar month before or the calendar month after the month in which it is due is considered to have taken it when due, and future authorization renewal dates do not change.

§ 142.93 Training center evaluator requirements.

(a) In order to authorize a person as an evaluator, a training center must ensure that the person—

(1) Is approved by the Administrator;

(2) Is in compliance with §§ 142.13, 142.85, 142.87, 142.89 and 142.91 of this part; and

(3) Prior to initial authorization, and every 12-calendar-month period following initial authorization, satisfactorily completes a course of training given by the employing training center which includes the following:

(i) Pilot evaluator duties, functions, and responsibilities;

(ii) Methods, procedures, and techniques for conducting required checks;

(iii) Evaluation of pilot performance; and

(iv) Management of unsatisfactory checks, and subsequent corrective action.

(b) A person who satisfactorily completes a course of training required by paragraph (a) of this section in the calendar month before or after the month in which it is due is considered to have taken it when due.

§ 142.95 Aircraft requirements.

An applicant for, or holder of, a training center certificate must ensure that each aircraft used for flight instruction meets the following requirements:

(a) If the aircraft is operated in the United States by a training center or satellite training center located in the United States, the aircraft must—

(1) Be registered as a civil aircraft of the United States; and

(2) Have an FAA standard airworthiness certificate.

(b) If the aircraft is operated outside the United States by a training center or satellite training center located outside the United States, the aircraft must—

(1) Meet the aircraft registration requirements of the country in which it is operated; and

(2) Have a foreign equivalent of a standard airworthiness certificate.

(c) The aircraft must be maintained and inspected in accordance with the requirements of subpart E of part 91 of this chapter unless maintained in accordance with a continuous airworthiness maintenance program as provided in part 121, part 125, part 127, part 129, or part 135 of this chapter.

§ 142.97 Flight simulators and flight training devices.

(a) An applicant for, or holder of, a training center certificate must show that each flight simulator and flight training device used for training, testing, and checking—

(1) Is qualified by the Administrator for each maneuver and procedure for the make, model, and series of aircraft, or set of aircraft, simulated, as applicable; and

(2) Is approved by the Administrator for use in each course or training program curriculum in which the flight simulator or flight training device is to be used.

(b) The approval described in paragraph (a)(2) of this section includes the set of aircraft, or category, class and type aircraft, and the variation within type, as applicable, for which the training, testing, or checking is being conducted and the maneuver, procedure, or crewmember function involved.

(c) Each qualified and approved flight simulator or flight training device used by the training center must—

(1) Be maintained to ensure the performances, functions, and all other characteristics that were required for approval;

(2) Be modified to conform with any modification to the airplane being simulated that results in changes to performance, function, or other characteristics required for approval;

(3) Be given a functional preflight check before being used; and

(4) Have a discrepancy log in which each discrepancy is entered by the using instructor or evaluator at the end of each session.

(d) Unless otherwise authorized by the Administrator, all components on a qualified and approved flight simulator or flight training device used by a training center must be operative.

(e) The holder of a training center certificate shall not be restricted to specific—

(1) Route segments during LOFT scenarios; and

(2) Visual data bases replicating a specific customer's bases of operation.

(f) Training centers may request evaluation, qualification, and continuing evaluation for qualification of flight simulators and flight training devices without holding an air carrier certificate and without having a specific relationship to an air carrier certificate holder.

Subpart H—Operating Rules [Air Carrier and Part 125]

§ 142.101 Applicability.

This subpart prescribes the operating rules applicable to a training center certificated under this part and operating a course or training program curriculum approved in accordance with subpart F of this part.

§ 142.103 Privileges.

(a) Training center flight simulator instructors and evaluators may meet recency of experience requirements in a qualified and approved flight simulator or flight training device, if the flight simulator or flight training device is used in a course approved in accordance with subpart B, or subpart F, of this part, as applicable.

(b) Aircraft manufacturer's training centers may provide Initial Operation Experience to training cadre of air carrier certificate holders.

(c) Aircraft manufacturer's instructor pilots may satisfy the recency of experience requirements of § 61.57 of this chapter through revenue service flights, flight training, or production and engineering test flights, if those pilots meet the requirements of § 142.89 applicable to training center check airmen.

§ 142.105 Limitations.

(a) A training center certificate holder shall ensure that a flight simulator or flight training device freeze, slow motion, or repositioning feature is not used during testing, checking, or LOFT.

(b) When flight testing, flight checking, or LOFT is being conducted, the training center certificate holder must ensure that:

(1) Except as provided by paragraph (b)(2) of this section, a crewmember qualified in the aircraft category, class, and type, if a type rating is required, occupies each crewmember position; or

(2) A student enrolled in a specific course for training, checking, testing, or LOFT occupies each required crewmember position for those functions in that course without holding the pilot certificates and ratings necessary to qualify for that crewmember position.

(c) The holder of a training center certificate may not recommend a trainee for a certificate or rating, unless the trainee—

(1) Has satisfactorily completed the training specified in the course approved under § 142.77 of this part; and

(2) Has passed the final tests required by § 142.77 of this part.

(d) The holder of a training center certificate may not graduate a trainee from a course unless the trainee has satisfactorily completed the curriculum requirements of that course.

Subpart I—Recordkeeping [Air Carrier and Part 125]

§ 142.111 Applicability.

This subpart prescribes the training center recordkeeping requirements for trainees enrolled in a course, and instructors and evaluators authorized to instruct a course, approved in accordance with subpart F of this part.

§ 142.113 Recordkeeping requirements.

(a) A training center certificate holder must maintain the records required for this subpart for each trainee who receives training, testing, or checking under this part for part 121, part 125, or part 135 of this chapter.

(b) The records required by paragraph (a) of this section must contain—

(1) The name of the trainee;

(2) The name of the trainee's employer;

(3) The name of the course and the make and model of flight training equipment used;

(4) The name of each evaluator who conducts a required test or check.

(5) The date and result of all training, tests, or checks undertaken; and

(6) The date of training and the name of the instructor providing training.

(c) A training center must maintain a record for each instructor or evaluator authorized to instruct a course approved in accordance with subpart F of this part, indicating that the instructor or evaluator has complied with the requirements of §§ 142.13, 142.85, 142.87, 142.89, 142.91, and 142.93, of this part, as applicable.

(d) The certificate holder shall maintain the records required by paragraphs (a) through (c) of this section for at least 1 year following the completion of training.

(e) The certificate holder must provide to the Administrator, upon request and at a reasonable time and in a reasonable place, the records required by paragraphs (a) through (c) of this section.

(f) The certificate holder shall provide to a trainee, upon request and at a reasonable time, a copy of his or her training records.

§ 142.114 Record of training recipients.

(a) A training center must maintain a list of air carrier certificate holders for whom it conducts training, testing, or checking, including the names of the courses and type of tests or checks accomplished for each certificate holder.

(b) A training center must forward, within 30 days of any change or addition, the report required by paragraph (a) of this section to—

(1) The FSDO having responsibility for the training center; and

(2) The air carrier certificate holder's POI.

Subpart J—Other Approved Courses

§ 142.115 Conduct of other approved courses.

(a) An applicant for, or holder of, a training center certificate may apply for approval to conduct a course for which a curriculum is not prescribed by this part.

(b) The course for which application is made under paragraph (a) of this section may be for flight crewmembers other than pilots, airmen other than flight crewmembers, material handlers, ground servicing personnel, and security personnel, and others approved by the Administrator.

(c) An applicant for course approval under this subpart must comply with the applicable requirements of subpart B or subpart F of this part.

(d) The Administrator shall approve the course for which the application is made if the training center or training center applicant shows that the course contains a curriculum that will achieve a level of competency equal to, or greater than, that required by the appropriate part of the Federal Aviation Regulation.

Issued in Washington, DC on July 15, 1992.

Thomas C. Accardi,

Director, Flight Standards Service.

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Part III

Environmental Protection Agency

40 CFR Parts 268 and 271
Land Disposal Restrictions "No Migration" Variances; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 268 and 271

[FRL-3763-4]

RIN 2050-AC44

Land Disposal Restrictions "No Migration" Variances

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and notice of availability.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) is proposing its interpretation of the "no migration" variance to the Congressionally mandated restrictions on land disposal of hazardous waste, and also is proposing a minor modification to the Land Disposal Restrictions regulations to reflect this interpretation. The Environmental Protection Agency also is proposing new procedural and substantive requirements for petitioning the Agency and demonstrating that there will be "no migration" from a land disposal unit, as well as the Agency's criteria for evaluating such "no migration" petitions. Additionally, the Agency is proposing under the authority of RCRA Section 3004(n), standards that would limit organic air emissions from land treatment, landfill, and waste pile units that, having successfully demonstrated "no migration" and received the variance, are allowed to dispose hazardous wastes that do not meet the Best Demonstrated Available Technology (BDAT) treatment standards, which are normally required prior to land disposal. In this action the Agency also is announcing the availability of a draft guidance manual for petitioners making the no migration demonstration entitled No Migration Variances to the Hazardous Waste Land Disposal Prohibitions: A Guidance Manual for Petitioners (U.S. EPA, Draft, July, 1992). These actions are in response to amendments to the Resource Conservation and Recovery Act (RCRA), enacted through the Hazardous and Solid Waste Amendments of 1984 (HSWA).

DATES: Comments on the proposed rule must be received on or before September 25, 1992.

ADDRESSES: Comments should be addressed to the docket clerk at the following address: U.S. Environmental Protection Agency, RCRA Docket (Room 2427) (OS-305), 401 M Street, SW., Washington, DC 20460. One original and two copies should be sent and identified at the top by regulatory docket reference number F-92-NMVP-FFFFF. The Docket is open from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. The public must make an appointment to review docket materials, and should call the docket clerk at (202) 260-9327 for appointments. The public may copy, at no cost, a maximum of one hundred pages of material from any one regulatory docket. Additional copies are $0.15 per page.

Copies of the guidance manual for no migration petitioners can be obtained from the National Technical Information Service (NTIS), U.S. Department of Commerce, Springfield, Virginia 22161, at (703) 487-4600: No Migration Guidance (NTIS #PB 92-207 695).

FOR FURTHER INFORMATION CONTACT: For general information about this proposed rulemaking, contact the RCRA Hotline, Office of Solid Waste (OS-305), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (800) 424-9346 (tollfree) or (703) 920-9810 in the Washington, DC, metropolitan area.

For information on aspects of this proposed rule pertaining to No Migration, contact Dave Reeves, Office of Solid Waste (0S-343), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 260-4692.

For information on aspects of this proposed rule pertaining to control of organic air emissions from no migration units under RCRA Section 3004(n), contact Kent C. Hustvedt, Office of Air Quality Planning and Standards (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711, (919) 541-5395.

SUPPLEMENTARY INFORMATION:

Preamble Outline

I. Authority

These regulations are issued under the authority of sections 1006, 2002(a), 3001, 3004, 3005, and 3015 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984, (42 U.S.C. 6905, 6912(a), 6921, 6924, 6925, and 6935).

II. Background

Sections 3004 (d), (e), and (g) of RCRA provide that land disposal of hazardous waste that does not meet Best Demonstrated Available Technology (BDAT) treatment standards is prohibited, unless the Administrator determines that prohibition of one or more disposal methods is not required to protect human health and the environment for as long as the wastes remain hazardous. This determination must take into account such factors as long-term uncertainties of land disposal, the goal of proper management of hazardous wastes, and the persistence, toxicity, mobility, and bioaccumulative potential of the wastes and their constituents. These provisions indicate that in order to satisfy this standard, a hazardous waste management facility owner or operator must demonstrate in a petition to the Agency to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the disposal unit (or injection zone) for as long as the wastes remain hazardous. This is known as the "no migration" variance. Throughout this preamble, when the term "no migration" is used, it is intended to mean "no migration of hazardous constituents from the disposal unit or injection zone for as long as the wastes remain hazardous," as written in the statute and as interpreted in the regulatory language proposed at 40 CFR part 268 in today's notice.

The Agency codified this language in existing regulations under 40 CFR 268.6 on November 7, 1986 (51 FR 40572). These regulations were corrected on June 4, 1987 (52 FR 21010). Paragraph (k) of 268.6 was added on August 8, 1987 (52 FR 25160) requiring that liquid hazardous wastes containing PCB's in concentrations above 500 ppm cannot be the subject of a no migration variance. 40 CFR 268.6 was further amended on August 17, 1988 (53 FR 31138) to add additional procedural requirements for no migration petitions and for compliance with the terms of a variance.

once granted. These additional requirements are as follows: (1) Demonstrating compliance with other applicable Federal, State, and local laws; (2) submittal of monitoring plans for land disposal units; (3) reporting changes in operating conditions from the ones described in the variance application, and, (4) reporting detection of migration of hazardous constituents, and suspending receipt of prohibited hazardous wastes. Final regulations for underground injection of hazardous waste published in the **Federal Register** on July 26, 1988 (53 FR 28118) further clarified EPA's interpretation of "no migration" as it applies to underground injection of hazardous waste. It should be noted that today's proposed rulemaking is not intended to supersede these standards already promulgated for underground injection wells.

III. Summary of Proposed Rule

A. Interpretation of the Statutory Language

Today's notice explains the Agency's interpretation of the "no migration" statutory standard expressed in sections 3004 (d), (e), and (g) of RCRA and proposes minor amendments to section 268.6(a) to reflect this interpretation. Sections 3004 (d), (e), and (g) of RCRA provide that land disposal of hazardous waste that does not meet BDAT treatment standards is prohibited, unless the Administrator determines that the prohibition of one or more disposal methods is not required to protect human health and the environment for as long as the wastes remain hazardous, taking into account such factors as long-term uncertainties of land disposal, the goal of proper management of hazardous wastes, and the persistence, toxicity, mobility, and bioaccumulative potential of the wastes and their constituents. These provisions indicate that in order to satisfy this standard, an interested person must demonstrate to the Agency "to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the disposal unit or injection zone for as long as the wastes remain hazardous." EPA interprets this statutory language to require that petitioners demonstrate that hazardous waste constituents will not migrate from the land disposal unit (i.e. landfill, surface impoundment, waste pile, injection zone, land treatment unit, salt dome formation, salt bed formation, underground mine, cave, vault, or bunker) in hazardous concentrations for as long as the wastes remain hazardous. These concentrations must be met at the unit boundary for all environmental media: Ground water, surface water, soil, and air. The statute explicitly provides that the standard applies to migration from a unit or injection zone: "* * * there will be no migration of hazardous constituents from the disposal unit or injection zone * * *" (RCRA Sections 3004 (d), (e), and (g)) Therefore, the Agency proposes that consideration of attenuation of hazardous waste constituents beyond the boundary of the disposal unit or injection zone would not be acceptable as a basis for successfully making a petition demonstration.

The Agency thus would grant petitions where owners or operators demonstrate (to a reasonable degree of certainty) that hazardous waste constituents will not migrate at hazardous levels, or, put another way, where only non-hazardous levels of waste constituents migrate. This interpretation of the statute was recently upheld in *NRDC* v. *EPA*, 907 F.2d 1146 (D.C. Cir. 1990). In the *NRDC* case, the court noted that under EPA's interpretation, "hazardous constituents may migrate so long as the wastes immediately surrounding them at the border are no longer hazardous, or putting it slightly differently, so long as they do not migrate in high enough concentrations to be hazardous waste." *Id* at 1159–1160. The court examined EPA's interpretation and affirmed EPA's decision finding that Congress had made no clear determination in section 3004 that hazardous constituents must not migrate regardless of the hazard and that EPA's policy choice was reasonable. 907 F.2d at 1162.

Based on this interpretation of the statutory language provided above, the Agency proposes to clarify and amend § 268.6(a) to define the term "no migration of hazardous constituents from the disposal unit or injection zone" (or simply, "no migration") to mean that concentrations of hazardous constituents do not and shall not exceed Agency-approved health-based or environmental-based levels, in any environmental medium, at the boundary of the unit or injection zone. Under this approach, possible migration pathways for each medium are as follows: Concentrations of hazardous constituents in ground water in the vicinity of the unit could not exceed the appropriate ingestion health-based levels for drinking water. Surface water concentrations, both in surface water bodies in the vicinity of the unit and in storm runoff from the unit, likewise could not exceed appropriate health-based levels for drinking water or ambient water quality criteria.[1] Similarly, concentrations in soil (including, but not limited to silt, loam, sand, gravel, and in some cases, rock) outside the unit could not exceed health-based levels for ingestion. Finally, air emissions of hazardous constituents from the unit, either in the form of particulates or volatilized organics, could not exceed the appropriate health-based levels for inhalation exposure. (Health-based levels for each medium are discussed in more detail in Section B of this preamble.)

In addition, the Agency proposes to modify § 268.6(a)(4) to require monitoring of all environmental media, i.e., ground water, surface water, soil, and air. Where petitioners can conclusively demonstrate that monitoring of any medium is unnecessary or technically infeasible or impractical, the Agency may determine on a site-specific basis to waive the monitoring requirement for one or more media. The point of compliance for both modeling and monitoring measurements will be at (or as near as possible to) the unit boundary (without compromising the integrity of the unit). For the air medium, compliance will be measured at the downwind edge of the unit boundary at a height of 1.5 meters. (The point of compliance for demonstrating "no migration" is discussed in more detail in Section C of this preamble.)

B. Hazardous Levels

The Agency will be using EPA-approved health-based levels for ground water, surface water, soil, and air to designate "hazardous levels of hazardous constituents." The Agency currently is using peer-reviewed health and environmental effects data in several areas including clean closure, delisting, and proposed trigger levels for corrective action. Such data for each medium of concern are based, for the most part, on the drinking water Maximum Contaminant Levels (MCLs), surface water quality criteria (Ambient Water Quality Criteria 45 FR 79318, November 18, 1980; 49 FR 5831, February 15, 1984; 50 FR 30784, July 29, 1985), verified Reference Doses (RfDs) for systemic toxicants developed by the Agency's Risk Assessment Forum, and

[1] Note, however, that where the petitioning unit has complied with permit design requirements to prevent run-on or run-off from a 24-hour, 25-year storm, and a storm of even greater magnitude results in run-on or run-off from the unit, the Agency would consider this an exceptional or unpredictable event. EPA therefore would consider allowing continued operation of the unit under the no migration variance once any damage that affects the unit's operation has been corrected.

Risk-Specific Doses (RSDs) for carcinogens developed by the Agency's Carcinogen Assessment Group. These dose levels are used with standard exposure assumptions for each medium (ground water, surface water, soil, and air) to obtain allowable health and environmental levels. The maximum residual risk level would be the same for Class A and B carcinogenic constituents, 1×10^{-6}. For Class C carcinogens the maximum residual risk level would be 1×10^{-5}. Detailed information on the exposure assumptions and lists of the applicable concentration levels for ground water, surface water, soil, and air for some hazardous constituents are contained in the RCRA Facility Investigation (RFI) Guidance (U.S. EPA, Interim Final, May, 1989), and in the proposed Subpart S Corrective Action Rule (55 FR 30798; July 27, 1990). Additional information on health-based levels is available on EPA's Integrated Risk Information System (IRIS, On-line database, U.S. EPA, 1991), EPA's "Carcinogenic Risk Assessment Verification Endeavor (CRAVE) Risk Estimate for Carcinogenicity" (U.S. EPA, 1990), and in the Superfund Public Health Evaluation Manual (U.S. EPA, 1986).

EPA proposes to use appropriate levels such as those described in the above references for approving or disapproving a no migration petition. Maximum Contaminant Levels (MCLs) for drinking water and Ambient Water Quality Criteria (AWQC) would receive first priority for use as appropriate levels, where they exist. Reference Doses and Risk-Specific Doses would be used secondarily in the absence of MCLs and AWQCs.

The Agency realizes, however, that Agency-approved levels do not exist for every hazardous constituent in Appendix VIII. In addition, the Agency acknowledges that existing health and environmental effects data available for some hazardous constituents have not been formally promulgated by EPA. In most cases, EPA believes it will be possible to develop reasonable estimates, based on best professional judgement, or to eliminate minor constituents from consideration because only trace levels exist in the waste. Where health-based levels are not available or cannot be estimated, and where more than very minor trace levels of a hazardous constituent are present in the waste, EPA believes background or analytical detection limits should be used. (EPA notes that it has adopted the above approach to setting health-based levels in the RCRA delisting program and the proposed Subpart S corrective action rule.) No migration petitioners also may wish to propose their own levels for constituents of concern, using reasonable worst-case assumptions. Petitioners should submit to the Agency data of sufficient quantity and quality for the Agency to determine the environmental and health effects of the constituent. Thus, there will be opportunity for notice and comment on each such level within the context of each petition. Data submitted for the purposes of determining an appropriate level should follow established EPA protocols to ensure the acceptability of the test data. (For example, following the toxicity testing guidelines of 40 CFR Parts 797 and 798 (50 FR 39252, September 27, 1985), would be considered *prima facia* evidence of the acceptability of the data.) Petitioners who choose to propose their own levels for constituents should consider that Agency review of such information may require additional time and could delay a determination on their no migration petitions.

The Agency believes that human health-based levels will be protective of both human health and the environment. Nevertheless, the Agency may determine that a unit boundary level for a constituent should be lowered from the human health-based standard in order to protect against detrimental environmental effects around the unit (e.g., those that may pose a threat to endangered species, or sensitive ecosystems).

The Agency realizes that many of the peer-reviewed human health-based levels are below an analytical detection limit. In these cases, where modeling is possible, the petitioner must demonstrate that no migration will occur above the human health-based levels using modeling and analysis. As stated in 40 CFR 268.6, any models must be verified and calibrated to the site. In demonstrating compliance with the terms of the petition during the life of the unit, the petitioner will, of necessity, use analytical detection limits as the basis for compliance. Use of analytical detection limits should be based upon methodology prescribed in Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods, (EPA Publication No. SW–846, 1986, third edition), with the lowest possible detection level indicated therein for each hazardous constituent.

Finally, the Agency considered, but is not proposing as a general rule to take into account, the effects of additivity of hazardous constituents within a single environmental medium in setting the levels that the petitioner must meet to demonstrate no migration. Similarly, the Agency also considered but rejected an approach that would assess additivity across two or more media (e.g., ground water and air). Guidelines for using additivity in assessing the risks posed by multiple contaminants are contained in "Guidelines for the Health Risk Assessment of Chemical Mixtures" (51 FR 34014, September 24, 1986). The Agency does not currently intend to use this approach, because it believes that a determination of additive effects of two or more chemicals or across two or more media would be exceedingly difficult, would involve too many uncertainties, and would be unnecessarily conservative. For example, a constituent ingested via the ground water exposure route may have a different mechanism of action and different target organ(s) from those of the same constituent when inhaled; similarly, two different chemicals ingested by the same route might have different target organs. Furthermore, the exposure routes considered under this rule are projected and hypothetical, rather than actual, exposures. Therefore, EPA believes that consideration of additivity for two or more hypothetical exposure routes is generally unnecessary, especially given the conservatism of its exposure assumptions in the current approach. (In some cases, however—e.g., where actual rather than hypothetical long-term exposure is involved—EPA may take a more conservative approach, and consider additivity, where technically feasible.) The Agency believes that assessing effects of different constituents individually within one hypothetical exposure medium is both consistent with the statutory no migration standard and fully protective of human health and the environment.

1. Consideration of Ambient Concentrations

As discussed above, the Agency believes the statutory concern is over the hazardousness of contaminants that may cross the unit boundary. EPA has previously interpreted the unit boundary as the point of compliance for no migration petitions and specifically rejected an approach that would have considered attenuation factors for movement of contaminated groundwater outside the unit boundary. [51 FR 40638, November 7, 1986.] Similarly, EPA does not believe ambient or background concentrations of constituents outside the unit boundary should be considered in evaluating migration out of the unit. With these factors in mind, the Agency is considering three options for addressing no migration in situations

where ambient contaminant concentrations exist.

In the first option, existing concentrations in ground water would only affect no migration variances to the extent they indicate that a unit may already be contributing to those levels through contamination. EPA would not accept possible dilution of releases when they flow into the aquifer as the basis for a less stringent standard on the level of concentration allowed to leave the unit. Nor would it make the standard more stringent because the receiving ground water is already above ambient levels. Rather, the no migration determination would continue to be based upon whether the concentrations of the constituents migrating from the unit itself exceed hazardous (i.e., health-based) levels.

For example, assume ground water upgradient from the petitioning unit has a concentration of 10 mg/l of hazardous constituent A and the health-based level for constituent A is 5 mg/l for drinking water. The no migration standard EPA proposes to apply in this case would nonetheless require that any release from the unit not contain concentrations of constituent A above 5 mg/l. Depending on the leachate concentration, the volume of leachate that reaches the ground water, and the degree of mixing that occurs between the leachate and the underlying ground water, a monitoring well located downgradient from the petitioning unit could contain varying concentrations of hazardous constituent A. The Agency recognizes that the aforementioned variables raise some uncertainty in estimating leachate concentrations released from the unit on the basis of upgradient and downgradient ground water measurements.

There are also instances, however, where migration of any level of constituent A from a unit might add the same amount to the ambient background concentration of a given environmental medium. An example is volatilization of hazardous constituents from liquid or solid material in the unit to ambient air outside the unit. In this situation, unlike that of fluids, every molecule added from the unit to the air will incrementally increase the concentration in the air at the unit boundary above pre-existing background levels. Again, EPA's proposed approach is not to consider the pre-existing background levels in the air but, instead, to focus on the incremental increases at the point of compliance that are attributable to migration from the unit. The Agency recognizes that this approach allows total concentrations at the unit boundary above the pre-existing background such that the sum may, in fact, be above health-based levels.

Inherent in any determination of background levels is a consideration of statistical variability. This variability results from the sampling distribution of the measurements, as well as the sampling and analysis variability, and variability due to spatial and temporal factors. General RCRA ground water monitoring guidance recommends the use of confidence intervals for comparison to a fixed compliance standard. For all options presented in this section, the Agency is proposing a similar approach where a 95% confidence interval is constructed around the mean background concentration. (For normal distributions, this confidence interval calculation is as follows:

$$\bar{x} \pm t_{(0.95,n-1)}\, s/\sqrt{n}$$

Where $\bar{x}$ is the mean, $t_{(0.95,n-1)}$ is obtained from the Student's t-Distribution, S is the standard deviation of sample values, and n is the sample size.) For more information on statistical variability and construction of confidence intervals, see the "Guidance Document on the Statistical Analysis of Ground-Water Monitoring Data at RCRA Facilities," (EPA/530–SW–89–0026; April 1989; NTIS: PB89–151–047).

For the first option, discussed above, EPA proposes that the upper limit of this confidence level be used to define background (i.e., ambient levels), and that Agency-approved health-based levels would be added to the upper confidence limit in determining no migration limits at downgradient points of measurement. Any downgradient measurement that exceeds this sum would be considered migration.

A second option in situations of existing ambient concentrations is not to allow the contribution at the unit boundary from background levels and the contribution from the unit, together, to exceed the health-based standard. This second option would be more stringent than the first option; in effect, it also would be a type of locational requirement. For example, in relatively pristine areas a unit could meet the no migration demonstration as long as the resulting level at the unit boundary is below the applicable health-based standards. In areas where pre-existing background concentrations are elevated, the unit would be less likely to meet the no migration standard. If background concentrations are already above the health-based levels, a unit could not meet the no migration demonstration. The ultimate determination of compliance would be the downgradient measurement, which, very simply, could not exceed the health-based level used as the no migration standard.

A third option in situations where background levels of a hazardous constituent exist would be to set some *de minimis* level of allowable constituent addition from the unit. For example, where the ambient air is already above the health-based level, the unit could release an additional level of constituents measured at the unit boundary, but the contribution from the unit must not increase the overall risk level beyond a small (statistically insignificant) increment. In contrast to Option 1, the amount of allowable increase would not be set by reference to existing health-based levels, but by establishing a level for this purpose only. The Agency proposes for this third option that the *de minimis* level be determined based on the statistical variability associated with the background concentrations. For example, the background concentration would be determined as discussed previously, by constructing a 95% confidence interval around the mean concentration of the background sample measurements.

In this third option, the upper limit of the confidence interval constructed from background sample measurements would be used for no migration purposes. Measured values downgradient would be compared to this upper limit to evaluate whether a statistically significant increase above background concentrations had occurred. Where any downgradient sample measurement was found to fall above the upper 95% confidence limit, it would be statistically significant and migration would be considered to have occurred.

EPA solicits comments on these three or any other approaches. In particular, we are seeking input from commenters as to the relative burden that may be imposed, either on petitioners or the reviewing Agency, in implementing any one of the three options. Also, are there exceptional technical difficulties associated with implementing a specific option? The Agency requests comments from the public on whether the *de minimis* approach (Option 3) is more difficult to implement than the other options, for instance, due to the lack of standard monitoring protocols for air.

C. Point of Compliance for No Migration

The statutory standard requires that there will be no migration of hazardous constituents from the unit or injection zone. As discussed above, the Agency interprets this to mean that hazardous

constituents will not migrate at hazardous levels from the unit (or injection zone). Thus, the point of compliance for making this demonstration is the unit boundary (or the boundary of the injection zone; see 53 FR 28118, July 26, 1988 for a discussion of "injection zone"). For land disposal units, a "hazardous waste management unit" as defined in 40 CFR 260.10, is a "contiguous area of land on or in which hazardous waste is placed, or the largest area in which there is a significant likelihood of mixing hazardous waste constituents in the same area."

For the purposes of demonstrating no migration from the unit, the Agency believes that, where an engineered barrier (e.g., a liner) exists for surface impoundments, landfills, waste piles, or land treatment units, the unit boundary consists of the outermost extent of the engineered barrier of the unit. The outermost extent of the engineered barrier also constitutes the point of compliance for each medium. For example, in demonstrating no migration from the unit via ground water or subsurface soil, the unit boundary would consist of the outer liner present in a surface impoundment, landfill, land treatment unit, or waste pile. In demonstrating no migration from such a unit via surface water runoff or surface soil, the outer limits of any dikes, ditches, or berms present at the edge of the "hazardous waste management unit" constitute the point of compliance. In demonstrating no migration from the unit via the air pathway, the outer extent of any engineered barrier over the unit (roof, dome, etc.) would constitute the point of compliance.

While engineered barriers form a useful way to delineate the boundary of a hazardous waste management unit, the Agency recognizes that these engineered components do not always exist. For example, most units are not enclosed to protect from migration via air. In this case, the Agency proposes that the downwind edge of the unit at a height of 1.5 meters constitutes the point of compliance for demonstrating no migration via air. (A height of 1.5 m corresponds with a typical inhalation height. This height also is proposed because it would facilitate monitoring of particulate emissions, which cannot be accurately monitored close to the soil surface without effectively vacuuming large and small particles into the apparatus.) For air demonstration purposes, any berms, dikes, or ditches that surround the area of waste placement define the "edge" of the unit. (However, for determining the point of compliance for the air medium or other media, the Agency does not intend to allow the inclusion of unreasonable buffer zones between the area of waste placement and a perimeter dike, berm, or ditch.)

In cases where units are unlined (e.g., a unit obtaining an exemption from liner requirements under § 264.221 (b) or (d)), the petitioner and the petition reviewer must use best professional judgement to set the unit boundary. Unlined land treatment units have a subsurface point of compliance at the base of the maximum treatment zone (not exceeding a depth of 5 feet from the initial soil surface), or immediately outside of any liner that may exist. Finally, for some miscellaneous units such as those regulated under subpart X (e.g., geologic repositories), the unit boundary should be decided on a site-specific basis. In all cases where a no migration petition is filed, however, the Agency will demarcate the unit boundary and point of compliance for demonstrating and evaluating no migration via all media in a suitably stringent manner.

Although engineered barriers are used to define the unit boundary, EPA believes (and Congress in the legislative history indicated) that engineered barriers such as liners cannot be assumed to be adequate to prevent migration of hazardous wastes from a land disposal unit or injection zone. S. Rep. No. 284, 89th Cong. 2d. Sess. at 15. Consequently, EPA proposes that, except for temporary storage units, the no migration demonstration must rely upon other assurances to demonstrate no migration of waste from the unit. (For temporary storage units, the no migration demonstration may be based upon removal of the waste prior to failure of the engineered barrier.) This approach, of course, does not exempt an owner or operator who has a no migration variance from parts 264 and 265 design requirements for liners and other engineered barriers.

D. Petitions to Demonstrate No Migration

The Agency intends to limit the approval of petitions for a no migration demonstration to those that can demonstrate compliance with the conditions outlined in today's interpretation to a reasonable degree of certainty. The Agency also recognizes that site-specific factors can be relevant to consideration of a petition and to a no migration determination. Owners and operators who believe they have land disposal units that will qualify for approval, should submit petitions to the Administrator. At the date of issuance of this notice, EPA has already received a number of petitions and is reviewing them under existing regulations and guidance.

For underground injection wells, separate requirements exist for the development and review of no migration petitions as outlined in the rule promulgated July 26, 1988 (53 FR 28118).

Specific existing requirements for the development and processing of no migration petitions for land disposal units are outlined in 40 CFR 268.6. The Agency believes that a petition to demonstrate no migration should include (but is not limited to) two essential components in its approach: (1) Sufficient site-specific, theoretical, long-term projections about the unit, waste, and environmental conditions to insure that migration at hazardous levels will not occur from the unit to any medium (or, for temporary units, as long as the waste remains in the unit); and (2) current data derived from monitoring, sampling, and analysis of the unit, waste, and environmental conditions that both confirm the models and describe current conditions.

The assumptions and input data used in site-specific modeling projections should be based on site conditions. Models, input data, and relevant documentation should be available to EPA upon request and without restriction. EPA is discouraging the use of proprietary models, as the models selected will have to be closely scrutinized to determine their reasonableness and accuracy, and will be subject to public comment.

Furthermore, in today's proposed amendment to 40 CFR 268.6(a)(4), no migration variances will require, as a condition of their approval, monitoring of all environmental media (ground water, surface water, soil, and air) to detect migration of hazardous constituents from the unit at the earliest practicable time. In certain cases the Administrator may determine, based upon waste- and site-specific characteristics, that monitoring of one or more media is unnecessary at an individual site, because migration to that medium (those media) clearly is not a realistic concern (e.g., ambient air monitoring at some types of underground geologic repositories). Similarly, the Administrator may determine that conventional monitoring of one or more media immediately at the unit boundary is technically infeasible or impractical. However, in most cases of technical infeasibility or impracticality, the Agency still will require some type of monitoring or modified monitoring as near as possible to the unit boundary without

compromising the integrity of the unit. (For more information on no migration monitoring in situations of technical infeasibility or impracticality, see the "Land Disposal Restrictions for First Third Scheduled Wastes; Final Rule" (53 FR 31189, August 17, 1988). The Agency also may determine in certain situations that modeling of a particular medium likewise is unnecessary or infeasible (e.g., air modeling for a covered waste pile). However, where an engineered control such as a cover exists for which modeling is infeasible, the Agency may require the petitioner to assess the performance of the engineered system in lieu of modeling. Petitioners who believe that one of these situations applies to their unit should include in the petition information that clearly demonstrates why modeling or monitoring of any medium is unnecessary or technically infeasible. (For more discussion of monitoring requirements and monitoring plans that should be included in a no migration petition, see the Land Disposal Restrictions for First Third Scheduled Wastes, Final Rule, August 17, 1988, 53 FR 31139).

The Agency proposes to add new petition provisions at 40 CFR § 268.6(c)(3) to require that, for existing units that are receiving hazardous waste prior to submittal of the no migration petition, monitoring data for ground water, surface water, soil, and air be included as part of the petition. The Agency recognizes, however, that monitoring data may be difficult to collect, or may be nonexistent, for new units. Therefore, the Agency also is proposing additional petition requirements at 40 CFR § 68.6(c)(3) such that for both existing and new units, variance approval is conditioned upon Agency review and approval of monitoring data, gathered subsequent to unit operation, which confirms no migration. (Where subsequent monitoring data reveals migration, the Agency would revoke the variance.) However, at its discretion, EPA additionally may require that monitoring data for one or more media be submitted for a new unit prior to granting of the variance, as part of the petition, where such data are reasonably available (for example, monitoring data already generated as a result of the field test plot for the land treatment demonstration required under 40 CFR 264.272).

The Agency proposes that in most cases, in addition to initial monitoring to demonstrate no migration, detection monitoring to confirm no migration for ground water, surface water, and soil be conducted at regular intervals (for example, semiannually for ground-water monitoring to coincide with part 264 subpart F monitoring). However, for the air medium EPA is proposing a slightly different monitoring approach. Except for those units where the Agency has determined that air modeling or monitoring is unnecessary or technically infeasible, petitioners would be required to conduct a one-time, reasonable worst-case ambient monitoring program to confirm modeling estimates and to provide a correction factor for the modeling where necessary. (Air monitoring under reasonable worst-case conditions is proposed, because it would facilitate detection of hazardous constituents, which may be at low concentrations near detection limits.) Subsequent to granting of the variance, however, rather than performing regular ambient air monitoring during the operation of the unit, the Agency proposes that the owner or operator regularly sample the waste stream entering the unit to confirm that the modeled annual quantity of a hazardous constituent is not exceeded. The Agency proposes this approach because it believes that ambient air monitoring performed at the unit boundary may involve too many uncertainties and too much variability to be reliable in detecting migration. EPA requests comments on the proposed approach for air monitoring. Additional guidance for making the no migration demonstration for all environmental media is provided in the guidance manual made available in today's notice entitled No-Migration Variances to the Hazardous Waste Land Disposal Prohibitions: A Guidance Manual for Petitioners. (U.S. EPA, Draft, July, 1992).

No migration variances may be issued for existing facilities having interim status or part B permits under RCRA, or for new facilities seeking a permit. Because much of the information that must be included in a RCRA part B application must also accompany the petition for a "no migration" variance, facility owners and operators are encouraged to submit petitions with the relevant part B data summarized and referenced, with copies of critical part B materials attached as needed. Petitions should be submitted to EPA Headquarters. Petitions will be reviewed by EPA Headquarters with assistance from Regional and State personnel.

Variances will be effective only after issuance; submittal of a petition will not exempt a facility from complying with applicable land disposal prohibitions. Variances will be valid for up to 10 years, but not longer than the term of the facility's RCRA permit, and they will automatically expire upon expiration, termination, or denial of a RCRA permit, or when the volume of waste for which the variance was issued is reached. Owners and operators desiring to renew expired variances must repetition the Agency. Petitions to renew must undergo the same notice and comment procedure as did the original petition.

EPA also is proposing today to amend § 268.6(f)(3) such that, subsequent to notification from the owner or operator, if the Administrator determines that migration is occurring or has occurred from the unit, the Administrator will revoke the variance. This approach is based upon the belief that, with the exception of the air medium, once a single verified migration event has been detected, the no migration demonstration has failed. (Note also the exception in the case of run-on or runoff resulting from an unpredictable future event, as identified previously in this preamble at footnote 1.) Variance holders have 10 days in which to re-sample to verify detection of migration from their unit. Verified migration events require suspension of receipt of waste at the unit and notification of EPA. For more information on detection of hazardous constituent migration and verification, see the "Land Disposal Restrictions for First Third Scheduled Waste; Final Rule" (53 FR 31189–31190; August 17, 1988).

For the air medium the Agency proposes to base the no migration standard upon an annual average air concentration. EPA proposes to interpret migration to the air medium as exceeding the health-based level for a hazardous constituent on an annual average basis, not on a single verified event. The Agency believes this approach is protective, since air health-based levels are based upon long-term exposure assumptions, and are not appropriate for use in an acute air exposure scenario. Furthermore, air concentrations are highly dependent upon dispersive and temporal factors, and therefore differ from the ground water, surface water, and soil media, where these factors are less significant. Acute air exposure scenarios would be addressed under § 268.6(a)(5), which requires compliance with other Federal, State, and local laws, and which would require compliance with OSHA short-term air exposure standards at 29 CFR part 1910 as a condition of the variance. EPA requests comments on this approach.

The Agency also today is proposing additional provisions at § 268.6(r) providing that the Agency will revoke a

unit's no migration variance if, on the basis of any information, the Agency at any time determines that migration from the unit has occurred, or that such a variance is no longer protective of human health and the environment.

The Agency should caution potential petitioners that the burden of proof in demonstrating no migration will be substantially greater for facilities with a history of continuing mismanagement of hazardous waste and serious compliance problems, as evidenced by State or EPA monitoring and inspection reports. (Minor infractions in compliance should not affect EPA's review of a petition.) This does not mean such facilities will be required to meet a more stringent standard, but that more information and analysis may be necessary, both in the petition and during operation under the variance, to confirm to the Agency's satisfaction that migration is not occurring and will not occur in the future. For example, more frequent waste stream analysis, or even sampling by an independent party could be required under the terms of the variance. Given that EPA must find "to a reasonable degree of certainty" that the test is satisfied, it obviously is reasonable for EPA to regard such facilities with special scrutiny.

Similarly, for a unit that has experienced releases (migration) in the past, the owner or operator petitioning for a variance will be under a greater burden of proof to demonstrate both: (1) That the same type of release will not occur in the future, and (2) that past and future releases can be separated for modeling and monitoring purposes. The second item could be particularly relevant for the ground water medium, for example, where contamination already detected in ground water could continue to appear in monitoring wells after a variance has been granted. It would be difficult to prove whether the contamination was from a past or present release. Likewise, for a unit located in a waste management area where releases have occurred from other units, it also could be difficult to differentiate between releases, particularly if the other units contained the same hazardous constituents as the unit for which a variance is sought.

In either case, the owner or operator is discouraged from submitting a no migration petition unless he or she can conclusively demonstrate not only that future migration will not occur, but also that past releases detected through monitoring either are not from the unit for which a variance is sought, or that they will not obscure or interfere with the ability of monitoring devices to detect future releases. If there is uncertainty, the assumption will be that the release is from the unit for which a variance is sought, and the variance likely will be denied or, if already granted, revoked.

E. Conditional Requirements of a No Migration Variance

EPA proposes that for certain land disposal units, no migration variances may be granted based upon conditional requirements. These conditions will be specified in the variance, and are as follows:

1. Land Treatment Units.

Land treatment units, under 40 CFR 264.272, are required to complete, and receive Agency approval of, a Land Treatment Demonstration. This Land Treatment Demonstration focuses on waste application rates and degradation rates, and it requires the owner or operator to demonstrate that hazardous constituents in the waste may be applied and completely degraded, transformed, or immobilized, without overloading the soil degradational capacity or causing migration of hazardous constituents outside of the treatment zone. Because the no migration variance will be granted based upon certain basic monitoring and modeling data, the Land Treatment Demonstration need not be complete in order to receive a no migration variance. Therefore, EPA today is proposing new requirements at § 268.6(j) providing that, for land treatment units, the variance will be conditioned upon completion of the Land Treatment Demonstration within two years after the date of granting of the no migration variance, or the variance will be revoked. This provision is intended to ensure completion of the Land Treatment Demonstration in a timely fashion, while nevertheless recognizing that the land treatment unit must operate in order to generate the relevant information and data. However, it should be clarified that this provison is not intended to provide any time extension of the requirement to have an approved no migration variance prior to land disposal of prohibited hazardous waste. Land treatment units would all be required to have an approved no migration variance prior to receipt of prohibited waste, regardless of whether the Land Treatment Demonstration is complete or not. Furthermore, petitioners with incomplete Land Treatment Demonstrations would also have to meet all of the same information requirements to fulfill no migration petition criteria.

The Agency also proposes to add new requirements for land treatment units at § 268.6(k) in order to assure that the no migration standard will continue to be met after the conclusion of the post-closure care period. The first situation of concern would occur if accumulations within the unit of nondegradable hazardous constituents exceed health-based levels for ingestion at closure and during the post-closure care period. If this occurs, the no migration standard could be exceeded via an ingestion, air dispersion, or surface runoff pathway. To ensure that migration would not occur, the Agency is proposing to require either that the unit be capped with clean soil at the end of the post-closure care period, or that hazardous constituents be removed at closure to concentrations below health-based levels. (If the petitioner were to choose the clean soil cap option, then a vegetative cover would have to be established on the unit, as required by § 264.280(c)(2). In addition, the petitioner would not be relieved of the existing requirement to provide a vegetative cover during the closure and post-closure care period.) The Agency proposes that the clean soil cap be installed at the end of the post-closure care period, rather than at closure, in order to allow the biodegradation process to continue without being smothered and inactivated by anaerobic conditions resulting from the soil cover.

The second situation of concern would occur if, at closure and at the end of the post-closure care period, non-degradable hazardous constituents present in the unit are capable of leaching at levels exceeding health-based levels. To ensure no migration, EPA is proposing that where the unit contains nondegradable hazardous constituents above health-based levels at closure, the facility owner must perform a leaching test or modeling procedure that the Agency determines is valid for the particular types of constituents present to determine their leachability. If modeling or test results show a potential for migration from the unit above the health-based levels, then at closure the petitioner must remove hazardous constituents to below health-based levels.

All existing closure and post-closure requirements under parts 264 and 265 are still applicable, and would in no way be superseded by today's proposed requirements at § 268.6(k). Rather, today's proposed variance conditions would add to existing parts 264 and 265 requirements. In particular, it should be noted that land treatment units (and other land disposal units) that will close

with hazardous constituents in place at concentrations above health-based levels must comply with 40 CFR 264.119(b) requirements for a deed notice that the site has been used for hazardous waste management, and consequently that future use is restricted. EPA expects that this provision will prevent future human intrusion into the site after the post-closure care period has ended.

2. Temporary Storage Units

Under Section 3004(k) of RCRA, land disposal is defined as placement (including temporary storage) of prohibited wastes in any land-based unit. Placement of prohibited wastes in a land-based unit can occur only after the unit owner or operator has been granted a no migration variance. Land-based units include: Landfills, surface impoundments, waste piles, injection wells, land treatment units, salt dome formations, salt bed formations, underground mines, caves, vaults, and bunkers. Use of a non-land-based unit to manage prohibited waste does not require a no migration variance. Non-land-based units include: Incinerators, tanks, and container storage areas. However, under 40 CFR 268.50, certain restrictions are placed on the use of tanks and containers for storage of prohibited wastes: These units can be used to store such wastes only for the purpose of accumulating waste to facilitate its proper recovery, treatment, or disposal. Readers are advised to review the requirements of 40 CFR 268.50.

There may be circumstances under which owners or operators wish to store prohibited wastes in land-based units. As stated, doing so will require a no migration variance. The Agency indicated in the preamble to regulations promulgated on November 7, 1986 (51 FR 40572) its belief that an indoor waste pile with a concrete liner, used for temporary storage, might be a good candidate for a no migration variance. EPA wishes to caution potential petitioners that it does not consider all types of land-based units, nor all waste types, to be good candidates for a no migration variance for temporary land-based storage. The petition for such a unit would have to demonstrate that there would be no migration for as long as the wastes remain in the unit (assuming they remain hazardous for that time). A number of factors, including (but not limited to) the characteristics of the unit and the waste, the duration of storage, and locational factors, will be considered by the Agency in making a decision on a no migration petition for temporary land-based storage. As mentioned previously in this preamble the Agency proposes that, for land-based storage purposes, the containment of hazardous waste within engineered barriers (meeting minimum technology requirements) will be considered in making the no migration demonstration, provided that wastes are to be removed after a reasonably short storage period that may be conservatively projected to be well before the failure of the engineered barrier system.

The Agency today proposes to add provisions § 268.6 (l)(1) and (l)(2) to require the following as conditions of a no migration variance for temporary land-based storage units:

a. *Clean closure.* As part of the variance, the unit's closure plan must provide for clean closure, both technically and with adequate financial assurance, within a specified time period. The Agency proposes this approach to assure that no hazardous waste or hazardous constituent concentrations above health-based levels remain after closure that could migrate from the unit in the future.

b. *Management of wastes at closure.* The variance also must require that, at closure, the waste removed from the unit be managed in accordance with the prohibitions on land disposal, including meeting the treatment standards where appropriate. This provision is proposed to ensure that hazardous waste from a temporary land-based no migration storage unit is not merely transferred to another land-based storage or disposal unit in an effort to circumvent the treatment requirements.

3. Other Demonstrations

In certain cases, conditional variances may also be appropriate for performance assessments in units other than land treatment and temporary storage. For example, a petitioner seeking a variance for a subpart X unit such as a geologic repository may need to test waste in-situ to determine that migration will not occur over the long term. In this case, the petition would have to show that waste would not migrate during the period of the demonstration. No migration variances for such test demonstrations would be issued unless the Agency believes that a subpart X unit has a reasonable chance of successfully demonstrating no migration over the long term. Furthermore, the petition also must assure that all waste would be removed if the test demonstration failed.

4. Monitoring for New Units

As discussed earlier in this preamble, the Agency is proposing at § 268.6(c)(3) that approval of a no migration variance for a new unit shall be conditioned upon Agency review and approval of monitoring data, gathered subsequent to unit operation; these data must show that no migration of hazardous constituents is occurring. The Agency is proposing this approach because it recognizes that monitoring data on potential releases usually will not be available for new units. (However, where any monitoring data are available for a new unit, as a result of field test plots, etc., such data may be required as part of a no migration petition.) Similarly, an existing unit must also continue to demonstrate no migration through monitoring data collected during its operation. Approval of the no migration variance for an existing unit likewise is conditioned upon such operational monitoring data confirming no migration. The Agency requests comments on this approach.

F. Additional Demonstrations for the Air Medium

In addition to demonstrating no migration of hazardous constituents from the unit, petitions also are required, under current regulations at 40 CFR 268.6, to demonstrate compliance with other laws. For the air medium, this requirement necessitates that petitioners provide a certification of compliance with OSHA workplace air standards and the benzene NESHAP, and, once promulgated, provide data demonstrating compliance with the RCRA Section 3004(n) standards for controlling air emissions from hazardous waste treatment, storage, and disposal facilities.

1. OSHA Standards

OSHA workplace air standards may be found at 29 CFR part 1910. These standards include short-term (1-hour and an 8-hour average) air concentrations which must not be exceeded, or protective breathing apparatus must be worn by workers.

2. NESHAP for Benzene

Similarly, successful petitions also must include a certification of compliance with the National Emission Standards for Hazardous Air Pollutants (NESHAP) for benzene at 40 CFR part 61, published March 7, 1990, 55 FR 8292. This regulation requires certain facilities that manage greater than 10 Mg/yr of benzene in their waste to control certain waste streams, normally those with greater than 10 ppmw benzene in the waste. Facilities subject to the benzene NESHAP control requirements would be required to treat the waste to lower

benzene concentrations to a maximum of 10 ppmw prior to land disposing in an open (uncovered) unit.

3. 3004(n) Standards

a. *Introduction.* The EPA is proposing today to amend 40 CFR 268.6 to include an additional condition that the applicant for a no migration variance must satisfy. This condition would require that the applicant demonstrate in the no migration petition that the particular land treatment unit, landfill, or waste pile meets certain organic air emission standards proposed by EPA under 40 CFR part 264 subpart CC in a separate rulemaking, and would be imposed pursuant to RCRA section 3004(n) as well as sections 3004(d), (e), and (g). Specifically, as a condition for a no migration variance to dispose a waste having a volatile organic concentration equal to or greater than a certain action level, proposed as 500 ppmw,[2] in a land treatment unit, landfill, or waste pile, an owner or operator would need to install and operate on the land disposal unit a cover or enclosure connected through a closed vent system to a control device. As an alternative to using the control equipment, the owner or operator could elect to treat the waste (by a means other than by waste dilution) to reduce the volatile organic concentration to a level less than the proposed 500 ppmw action level before land disposal occurs.

b. *Background.* Section 3004(n) of RCRA directs EPA to "* * * promulgate regulations for the monitoring and control of air emissions from hazardous waste treatment, storage, and disposal facilities (TSDF), including but not limited to open tanks, surface impoundments, and landfills, as necessary to protect human health and the environment." To implement the Congressional directive of RCRA section 3004(n), EPA decided to use a phased approach so that standards could be implemented for certain TSDF emission sources as quickly as possible. In rulemakings separate from today's proposal, EPA first promulgated air emission standards for certain hazardous waste treatment processes (i.e., distillation, fractionation, thin-film evaporation, solvent extraction, steam stripping, and air stripping) to coincide with the development of regulations under RCRA section 3004(m) restricting the land disposal of untreated hazardous wastes (55 FR 25454; June 21, 1990). These final air emission standards apply to certain TSDF treatment unit process vents (Subpart AA in 40 CFR parts 264 and 265) and TSDF equipment leaks (Subpart BB in 40 CFR parts 264 and 265). For the second phase EPA has proposed standards, to be added to 40 CFR parts 264 and 265 as Subpart CC, that would require owners and operators of TSDF subject to the RCRA Subtitle C permitting requirements to install and operate organic emission controls on certain tanks, surface impoundments, containers, and miscellaneous units (56 FR 33490; July 22, 1991). These proposed standards are referred to in the remainder of this section as the "Subpart CC rulemaking."

The TSDF air emission standards established by the first and second phase rulemakings under RCRA section 3004(n) will control emissions of not only air toxics but also organic compounds that react photochemically with other chemical compounds in the atmosphere to form ambient ozone. Elevated ambient ozone concentrations are a major air pollution problem in most large cities in the United States. The EPA estimates that more than 100 million people live in areas in which ambient ozone concentrations exceed acceptable health-based levels defined by the national ambient air quality standards. Ozone is a pulmonary irritant that can impair normal human respiratory functions and can aggravate pre-existing respiratory diseases. Exposure to ozone also increases the susceptibility to bacterial infections. In addition, ozone can reduce the yields of citrus, cotton, potatoes, soybeans, wheat, spinach, and other crops as well as damage conifer forests, and cause a reduction in the fruit and seed diets of wildlife. Thus, EPA believes that organic emissions from land disposal units and other TSDF sources must be limited to levels that not only will adequately protect the public from the risk resulting from exposure to air toxics (by demonstration of no migration of hazardous constituents from the disposal unit), but also will adequately protect human health and the environment from exposure to elevated levels of ambient ozone.

The EPA considered and decided not to include land treatment units, landfills, and waste piles in the Subpart CC rulemaking. Estimates of existing nationwide organic emissions from land treatment units, landfills, and waste piles (based on data for the year 1985) are approximately 113,000 megagrams per year (Mg/yr). To characterize organic air emissions from TSDF sources to determine the applicability of the Subpart CC rulemaking, it first was necessary for EPA to make certain assumptions about how the hazardous waste management industry would respond to the land disposal restrictions. The EPA assumed that all hazardous waste would be treated to meet the BDAT treatment standards prior to placement of the waste in a land disposal unit. Furthermore, EPA assumed that compliance with the BDAT treatment standards would remove or destroy organics in the waste and, consequently, reduce the organic content of the wastes placed in land disposal units. Based on these assumptions, EPA estimated that nationwide organic emissions from land treatment units, landfills, and waste piles would be reduced to approximately 2,000 Mg/yr. Because the estimate results indicated that a large reduction in organic emissions would be achieved by treating wastes to BDAT levels prior to land disposal, EPA decided to defer developing standards for land treatment units, landfills, and waste piles to a time when the protectiveness of the land disposal restrictions with respect to TSDF air emissions could be better assessed.

Since this decision was made, EPA has developed and clarified in this notice procedural and substantive requirements in 40 CFR part 268 for petitioning EPA and demonstrating that there will be no migration of hazardous constituents from a land disposal unit. In accordance with the no migration petition requirements specified under 40 CFR 268.6, an owner or operator of a particular TSDF would be allowed upon approval from EPA to dispose in a land treatment unit, landfill, or waste pile specific hazardous wastes that are untreated or otherwise do not meet the BDAT treatment standards. Because the possibility now exists that some hazardous wastes may not be treated to meet BDAT treatment standards prior to disposal in land treatment units, landfills, and waste piles, EPA reassessed the need to apply air emission controls to these units for the purpose of limiting emissions of those organic compounds which react photochemically in the atmosphere to form ambient ozone (referred to here as "ozone precursors").

As previously discussed in this preamble, a condition for approval of a no migration variance is a demonstration by the applicant that no

[2] This level is not yet finalized. On July 22, 1991 (56 FR 33490), EPA proposed a level of 500 parts per million by weight (ppmw) as the action level for organic air emissions from TSDFs. This proposed level is subject to change as a result of public comments on the proposed rule. However, for the remainder of this discussion, the action level shall be referred to as the proposed 500 ppmw level. See elsewhere in this preamble for more discussion of EPA considerations in proposing this 500 ppmw action level.

migration of hazardous constituents will occur from the disposal unit into the air for as long as the waste remains hazardous. However, air emissions from land treatment units, landfills, and waste piles contain individual organic compounds which have been identified as ozone precursors but have not been listed as hazardous constituents. For a land treatment unit, landfill, or waste pile operated under a no migration varance in accordance with requirements established under authority of RCRA sections 3004 (d), (e), and (g), the owner or operator would demonstrate no migration of only those ozone precursors which are also listed as hazardous constituents but not all ozone precursors. Consequently, significant quantities of ozone precursors could be emitted from a land disposal unit granted a no migration variance. Therefore, EPA concluded that organic emission standards are needed for land treatment units, landfills, and waste piles operated under a no migration variance to provide ambient ozone protection.

c. *Regulatory approach.* Section 3004(n) of RCRA provides EPA with broad authority to control air emissions from TSDF sources as necessary to protect public health and the environment. This authority allows control of all types of ozone precursors to provide ambient ozone protection, and, thus, is the authority EPA is using to propose the organic emission standards for TSDF land treatment units, landfills, and waste piles operated under a no migration variance. Because these standards will be narrowly applied to these units, the standards are being proposed as part of the no migration variance rules in 40 CFR 268.6 even though they are under the authority of RCRA section 3004(n). In addition, as noted in a recent opinion, EPA retains residual authority to control non-hazardous constituents under the section 3004 (d), (e), and (g) variance process by virtue of the general protectiveness finding contained in the opening clause of those provisions. *NRDC* v. *EPA* No. 88–1657 (D.C. Cir. June 29, 1990).

The need to apply air emission controls to a particular TSDF waste management unit can be determined by the emission potential of the particular hazardous waste that is placed in the unit. For the subpart CC proposal, EPA evaluated possible formats and decided that the concentration of volatile organics in the waste is an appropriate indicator of the emission potential for a TSDF waste management unit. The volatile organics concentration (expressed in parts per million by weight (ppmw) as measured by the proposed EPA reference method 25D) is the total quantity of organics in a liquid or solid state that is likely to volatilize and, consequently, could be emitted to the atmosphere if not controlled. Therefore, the concentration of volatile organics in the waste is an appropriate indicator of the emission potential for a TSDF land treatment unit, landfill, or waste pile.

The EPA evaluated different volatile organic concentration action levels for the subpart CC proposal (i.e., 0 ppmw, 500 ppmw, 1,500 ppmw, and 3,000 ppmw) above which waste would need to be managed in units equipped with a cover vented to a control device or, for some quiescent sources, only a cover. Based on an evaluation of the options, a volatile organic concentration action level of 500 ppmw was proposed for the subpart CC organic emission standards for TSDF tanks, surface impoundments, and containers. For standards such as these that apply to interrelated sources to be effective, they must have uniform coverage of applicability from the point of waste generation through the point where the organics in the waste are either recycled, removed, or destroyed. When only a cover is applied to a tank, surface impoundment, or container, the volatilization of the organics in the waste is inhibited, but the organics are neither removed or destroyed. When a cover vented to a control device is applied to a tank, surface impoundment, or container, only that portion of the organics in the waste which are actually emitted from the waste management unit and vented to the control device are removed or destroyed. Organics still remain in the waste and can potentially be emitted from subsequent waste management units located downstream of the controlled waste management unit. Until organics in the waste are removed, recycled, or destroyed, they will still be emitted to the atmosphere from uncontrolled downstream waste management units. Selecting a higher or lower action level for land disposal units than was selected for the storage and treatment units that would be regulated by the subpart CC rulemaking would alter the effectiveness of the proposed standards. A higher action level would allow a portion of the organics retained in the waste by the use of suppression controls (i.e., covers) on the upstream waste management units to be emitted from the uncontrolled land disposal unit. A lower action level would require that controls be used on land disposal units receiving wastes from upstream waste management units using no controls. Therefore, to maintain the effectiveness of the proposed subpart CC standards and avoid improper application of controls, it is necessary to apply the same action level through disposal of the waste. Thus, EPA also is proposing in today's rule a volatile organic concentration action level of 500 ppmw for land treatment units, landfills, and waste piles, to be consistent with the proposed approach for subpart CC. In the final rule, this value may change to maintain consistency with the final subpart CC rule.

To establish the specific control requirements for a land treatment unit, landfill, or waste pile, EPA first reviewed the different emission control methods that can be used to reduce organic emissions from these land disposal units. These methods include using: (1) A cover to suppress the release of organics from the waste; (2) a closed vent system and control device in combination with the cover to capture and control the organic emissions released from the waste; or (3) treatment of the waste to remove or destroy the organics in the waste prior to placement of the waste in a land disposal unit.

Organic emissions can be suppressed by applying a cover that directly contacts or encloses the waste medium thereby creating a physical barrier over the waste surface which inhibits the volatilization of organics. The EPA has already proposed standards under the Subpart CC rulemaking that would require the application of covers to surface impoundments. Since surface impoundments can be many acres in size, and even larger than land treatment units, landfills, and waste piles, the certain covers suitable for surface impoundments could be installed on these land disposal units as well. The covers can be fabricated from either rigid material panels that are essentially impervious to organic permeation or from flexible, synthetic membrane sheets that have a high resistance to permeation of many types of organic compounds frequently contained in wastes managed at TSDF. Also, with proper installation and maintenance, leakage from cover seams and fittings can be limited to very low levels. Thus, covers are appropriate for controlling organic emissions from certain types of waste management units holding the waste for relatively short periods of time such as for temporary storage of the waste. However, waste that is placed in a land disposal unit remains in the unit for many years. Consequently, if the organics are not removed or destroyed

prior to placement in the land disposal unit, the potential still remains that the organics in the waste will be released to the atmosphere over the long term as the organics in the waste slowly escape by permeation of the cover material or through small leaks in cover seams and fittings. Therefore, using only a cover would not effectively control organic emissions from a land disposal unit.

To effectively reduce organic emissions from a covered land disposal unit, the cover needs to be vented to a control device. Using this control combination, the organic vapors released from the waste are captured in the enclosed space beneath the cover and then the captured gas stream is vented to a control device where the organics are removed or destroyed. A variety of control devices are available that are capable of achieving high organic emission control efficiencies. Organic removal control devices such as carbon adsorbers and condensers extract the organics from the gas stream and recover the organics for potential recycling or reuse. Organic destruction control devices such as vapor incinerators destroy the organics in the gas stream by oxidation of the organic compounds, primarily to carbon dioxide and water. The type of control device best suited for reducing emissions from a particular covered land treatment unit, landfill, or waste pile depends on the size of the unit and the characteristics of the organic vapor stream vented from the unit. To achieve the maximum potential control device organic emission reduction efficiency, the vent system used to convey the organic vapors from the covered unit to a control device must be closed so that no organic vapors can escape directly to the atmosphere prior to the gas stream entering the control device. A closed vent system consists of piping, connections, and, in some cases, a flow inducing device (e.g., a fan or blower) to transport the gas stream to the control device.

An alternative to using a cover vented to a control device would be to treat the waste by a means other than by waste dilution that reduces the volatile organic concentration to a level less than the proposed 500 ppmw. In this case, the owner or operator could select from a number of treatment processes that are effective in reducing the organic content of the waste below the proposed 500 ppmw action level but would not necessarily meet the specific BDAT treatment standards applicable to the waste. Treating the waste in this manner may offer significant cost savings to a TSDF owner or operator compared to the cost of installing and operating a cover vented to a control device on the affected land disposal unit, and thus may be the preferred way to comply with standards.

Given the need to limit organic emissions from TSDF land disposal units, and the suitability of applying the air emission controls selected for surface impoundments to other types of land disposal units, EPA is proposing today to include an additional condition for obtaining a no migration variance. This condition would require that each land treatment unit, landfill, or waste pile receiving the waste be managed in compliance with the air emission standards for certain surface impoundments as specified in the 40 CFR 264 subpart CC proposal. To comply with these standards, the owner or operator would either install and operate the specified air emission control equipment, or elect to treat the waste before land disposal by a means other than by waste dilution to reduce the volatile organic concentration to a level less than the proposed 500 ppmw. The remainder of this section summarizes the specific proposed requirements of 40 CFR part 264 subpart CC that EPA proposes to include in 40 CFR 268.6 as a condition for obtaining a no migration variance.

d. *Proposed requirements.* The proposed control equipment requirements are to install, operate, and maintain either a cover or enclosure connected through a closed vent system to a control device. These requirements would apply to any land treatment unit, landfill, or waste pile granted a no migration variance, including units for which a variance had already been granted. The cover (i.e, flexible membrane cover, air-supported structure, or any other type selected by the owner or operator) and all openings on the cover are to be designed and operated with no detectable emissions as determined by Reference Method 21 specified in 40 CFR part 60 appendix A. All openings in the cover such as hatches and access doors would need to be sealed (e.g., gasketed, latched) and kept closed at all times except when necessary to use the opening for waste loading, inspection, or sampling or for equipment inspection, maintenance, or repair. The closed vent system would be required to be designed, installed operated, and maintained so that there are no detectable emission as determined by monitoring the system using Reference Method 21. Each control device would be required to reduce the organics in the gas stream vented to it by at least 95 percent or, if an enclosed combustion device is used, to a total organic concentration of 20 ppm by volume as compounds determined by Reference Method 18 specified in 40 CFR part 60 appendix A. To document that a control device achieves this performance level, the owner or operator would be required to use either detailed design specifications for the control device or results of control device performance testing.

Determination that a waste contains less than the proposed 500 ppmw would be made by either direct measurement or knowledge of the waste at the point of waste generation. Direct measurement of the waste volatile organic concentration would be performed using the proposed EPA Reference Method 25D (56 FR 33490; July 22, 1991). Knowledge of the waste would constitute documentation that conclusively shows that the waste volatile organic concentration is below the specified limit under all conditions. For example, a company that generates a hazardous waste as a result of manufacturing a product could provide EPA with evidence that no organic chemicals are used in the manufacturing process. The waste determinations would need to be performed initially and repeated at least annually and, additionally, whenever the process or operation generating the waste has changed in such a manner that the volatile organic concentration may be increased.

The proposed standards would require the owner or operator to include certain emission control equipment items as part of the weekly inspections the owner or operator is already conducting to comply with existing RCRA standards (e.g. 40 CFR 264.273 for land treatment units, 40 CFR 264.303 for landfills, 40 CFR 264.254 for waste piles). For example, covers would need to be checked once per week by the facility workers to ensure that equipment is being used properly (e.g. covers are closed and latched except when workers require access to the unit) and the equipment is being maintained in good condition (e.g. no holes or gaps have developed in covers).

Continuous monitoring of control device operation would be required. This would involve the use of instrumentation to measure and record operating parameters that indicate whether the control device is operating correctly or is malfunctioning. Semiannual leak detection monitoring using Reference Method 21 would also be required for, certain cover components to ensure gaskets and seals are in good condition, and for closed

vent systems to ensure all fittings remain leak-tight.

The proposed recordkeeping requirements would require the owner or operator to record certain information documenting emission control equipment performance and maintenance in the on-site facility operating logs or files. This information would be available for review by EPA enforcement personnel during an on-site compliance inspection. The information to be collected and recorded would include: the results of all waste determinations for volatile organic concentration and organic vapor pressure; design specifications for closed vent systems and control devices; and emission control equipment inspection and monitoring records.

The proposed reporting requirements would require the owner or operator to submit a report to EPA only when: (1) A control device malfunction is not corrected within 24 hours of detection; or (2) a waste placed in an open land disposal unit exceeds the proposed 500 ppmw volatile organic concentration. If either of these events (referred to here as "exceedances") occur, the owner or operator would be required to maintain a record of the exceedance. For waste exceedances, the owner or operator would be required to submit a report to EPA within 30 days after the waste determination explaining why the waste was not managed in accordance with the requirements of the standards. For control device exceedances, the owner or operator would be required to submit a report to EPA on a semiannual basis describing any exceedances that occurred during the past 6-month period and explaining why each exceedance occurred.

IV. State Authorization

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under sections 3008, 7003, and 3013 of RCRA, although authorized States have independent enforcement authority.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final authorization administered its hazardous waste program entirely in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in the State which the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, the HSWA requirements apply in authorized States in the interim.

B. Effect on State Authorizations

Today's propoed no migration rule, which also limits organic emissions from land treatment, landfill, and waste pile units operating under a no migration variance, is proposed pursuant to sections 3004 (d), (e), (g), and (n) of RCRA (42 U.S.C. 6924 (d), (e), (g), and (n)), provisions added by HSWA. Therefore, the Agency is proposing to add the requirements to Table 1 in 40 CFR 271.1(j), which identifies the Federal program requirements that are promulgated pursuant to HSWA and take effect in all States, regardless of authorization status. States may apply for either interim or final authorization for the HSWA provisions identified in Table 1, as discussed in this section of the preamble.

As noted above, EPA will implement today's rule in the authorized States until they modify their programs to adopt these rules and the modification is approved by EPA. Because this rule is proposed pursuant to HSWA, a State submitting a program modification may apply to receive either interim or final authorization under section 3006(g)(2) or section 3006(b), respectively, on the basis of requirements that are substantially equivalent or equivalent to EPA's. The procedures and schedule for State program modifications for either interim or final authorization are described in 40 CFR 271.21. It should be noted that all HSWA interim authorizations will expire January 1, 1993 (see 40 CFR 271.24(c)).

40 CFR 271.21(e)(2) requires that States that have final authorization must modify their programs to reflect Federal program changes, and must subsequently submit the modifications to EPA for approval. The deadlines by which a State must modify its program to adopt this proposed regulation will be determined by the date of promulgation of the final rule, in accordance with 40 CFR 271.21(e). These deadlines can be extended in certain cases (40 CFR 271.21(e)(3)). Once EPA approves the modification, the State requirements become Subtitle C RCRA requirements.

A State that submits its official application for final authorization less than 12 months after the effective date of these standards is not required to include standards equivalent to these standards in its application. However, the State must modify its program by the deadlines set forth in 40 CFR 271.21(e). States that submit official applications for final authorization 12 months after the effective date of these standards must include standards equivalent to these standards in their applications. 40 CFR 271.3 sets forth the requirements a State must meet when submitting its final authorization application.

In addition to meeting the requirements in 40 CFR part 271, a State seeking authorization for today's rules must demonstrate the ability to capably implement the base RCRA program, as well as the additional HSWA elements. EPA's assessment of a State's capability will reflect an evaluation of the State's entire authorized program. The assessment will examine not only whether a State is effectively implementing the base program, but also how that State may implement additional program areas.

States with authorized RCRA programs (but which are not yet authorized for the requirements in today's rule) may already have requirements under State law similar to those in today's rule. These State regulations have not been assessed against the Federal regulations being proposed today to determine whether they meet the tests for authorization. Thus, a State is not authorized to implement these requirements in lieu of EPA until the State program modification is approved. Of course, States with existing standards may continue to administer and enforce their standards as a matter of State law. In implementing the Federal program, EPA will work with States under cooperative agreements to minimize duplication of efforts. In many cases, EPA will be able to defer to the States in their efforts to implement their programs, rather than take separate actions under Federal authority.

As of the date of this proposal, no States have received authorization to act on HSWA no migration petitions pursuant to the initial codification of sections 3004(d), (e), and (g) at 40 CFR 268.6 (51 FR 40572, November 7, 1986). The November 7, 1986 Codification Rule explains that a State's authorization status may change in response to further implementation of HSWA, i.e., when EPA publishes regulations which further define initially codified rules. Had any States been authorized for no migration under the November 7, 1986 Codification Rule, they would no longer be authorized under RCRA to implement these no migration rules when finally promulgated. (No migration regulated as a matter of State law is, of course, not affected.) This is because today's rules are more stringent than the initial codification of no migration requirements and, as explained above, the authorized State's regulations have not been assessed against the new standards. A State previously authorized for no migration may, of course, apply for and receive authorization for today's requirements.

States are not required to adopt the existing no migration regulation (§ 268.6), since it is a variance provision, and not adopting results in a more stringent State program. However, any State that has adopted the no migration regulation (§ 268.6) and is seeking authorization under part 271, must adopt the revisions to § 268.6 proposed in today's rule, since these revisions result in § 268.6 being more stringent.

Similarly, as of the date of this proposal, no States have received authorization to act on HSWA section 3004(n) air emission standards for hazardous waste landfill, waste pile, or land treatment units, proposed today at § 268.6(b)(6). States may also apply for and receive authorization for today's proposed 3004(n) requirements.

V. Regulatory Requirements

A. Regulatory Impact Analysis

Executive Order 12291 requires EPA to determine whether a new regulation will be "major" and, if so, that a Regulatory Impact Analysis be conducted. A major rule is defined as a regulation that is likely to result in:

1. An annual effect on the economy of $100 million or more;

2. A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or

3. Significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Agency has determined that today's proposed rule is not a major rule, because it does not meet the above criteria. Today's action is an interpretation of existing statutory and regulatory language and will not impose further resource burdens on the regulated community, other than the voluntary and already existing costs of compiling the no migration petitions themselves. In fact, no migration variances granted by the Agency provide relief from the costs of meeting BDAT treatment standards prior to land disposal, as required under the land disposal restrictions. Therefore, since this proposed rule is part of the overall program for no migration variances for land disposal of prohibited hazardous waste, reduced costs to the regulated community result. The national cost savings for units receiving a no migration variance, which allows land disposal of prohibited hazardous waste, are estimated to be substantial when compared with the costs to owners and operators of meeting the BDAT treatment standards for the same wastes. The Agency requests comments today on the estimated costs to the regulated community of preparing no migration petitions consistent with the existing procedural requirements as proposed to be amended, and also comments on the estimated cost savings to be realized from receipt of a variance.

The Office of Management and Budget (OMB) has reviewed today's proposed rule as required by Executive Order 12291.

B. Regulatory Flexibility Act

I certify that within the scope of the Regulatory Flexibility Act, these regulations will not have a significant economic impact on a substantial number of small entities. The regulations pertain to an optional variance, and impose no new regulatory or economic requirements on small businesses.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act 44 U.S.C. 3501 et. seq. and have been assigned OMB control number 2050–0062.

VI. References

(1) U.S. EPA, 1991. Integrated Risk Information System (IRIS). On-line. Office of Health and Environmental Assessment, Environmental Criteria and Assessment Office, Cincinnati, OH.

(2) U.S. EPA, 1990. Carcinogenic Risk Assessment Verification Endeavor (CRAVE) Risk Estimate for Carcinogenicity. Office of Health and Environmental Assessment, Environmental Criteria and Assessment Office, Cincinnati, OH.

(3) U.S. EPA, 1986. Superfund Public Health Evaluation Manual.

(4) U.S. EPA, Draft, July, 1992. No-Migration Variances to the Hazardous Waste Land Disposal Prohibitions: A Guidance Manual for Petitioners.

(5) U.S. EPA, 1986. Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods, EPA SW–846, Third Edition.

(6) U.S. EPA, May, 1989. No Migration Cost Analysis.

List of Subjects

40 CFR Part 268

Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians—lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: July 12, 1992.

William K. Reilly,

Administrator.

For the reasons set out in the preamble, 40 CFR part 268 is proposed to be amended as follows:

PART 268—LAND DISPOSAL RESTRICTIONS

The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), and 6924.

Subpart A—General

2. In 40 CFR part 268, subpart A, it is proposed to amend § 268.6 by revising paragraph (a) introductory text; by adding a semicolon at the end of paragraph (a)(3) in place of the period, by removing "and," at the end of paragraph (b)(4) and by adding a semicolon at the end of paragraph (b)(5) in place of the period; by revising paragraphs (a)(4) and (f)(3); by redesignating paragraphs (c)(3) through (c)(5) as paragraphs (c)(4) through (c)(6), and paragraphs (j) through (n) as paragraphs (m) through (q), respectively; by removing the words ", and" at the end of newly designated paragraph (c)(4) and adding in their place a period; and by adding new paragraphs (b)(6), (c)(3), (j), (k), (l), and (r) to read as follows:

§ 268.6 Petitions to allow land disposal of a waste prohibited under subpart C of part 268.

(a) Any person seeking an exemption from a prohibition under subpart C of this part for the disposal of a restricted hazardous waste in a particular unit or units must submit a petition to the Administrator demonstrating, to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the land disposal unit or injection zone for as long as the wastes remain hazardous. For the purposes of this demonstration, "no migration of hazardous constituents from the land disposal unit or injection zone" (or simply, "no migration") shall be interpreted to mean that concentrations of hazardous constituents released from the unit do not and shall not exceed Agency-approved health-based (or environmental-based, where the Agency determines to be appropriate) levels at the unit boundary and beyond. A petition must demonstrate that no migration is occurring or shall occur to the ground water, surface water, soil, or air media. The demonstration must include the following components:

* * * * *

(4) A monitoring plan that detects any migration of hazardous constituents from the unit to the ground water, surface water, soil, or air at the earliest practicable time, unless the Administrator determines that monitoring of one or more media is unnecessary or technically infeasible or impractical;

* * * * *

(b) * * *

(6) Each land treatment unit, landfill, or waste pile receiving the hazardous waste(s) in accordance with a variance granted under this section must be managed in compliance with the air emission standards for Surface impoundments in §§ 264.1081, 264.1082, 264.1084(b)(1), 264.1086, 264.1087, 264.1088, and 264.1089 of this chapter.[1]

(c) * * *

(3) For an existing unit at the time a no migration petition is submitted for that unit, the monitoring data collected according to the monitoring plan specified under paragraph (c)(1) of this section must be submitted to the Administrator prior to granting of the variance, as part of the petition, for his review and consideration. For new and existing units, granting of a variance under this section shall be conditioned upon Agency review and approval of monitoring data, gathered subsequent to unit operation, that confirm no migration of hazardous constituents from the unit. For a new unit, the Agency may require that monitoring data for one or more media, where reasonably available, be submitted to the Administrator prior to granting of the variance, as part of the petition, for his review and consideration.

* * * * *

(f) * * *

(3) Following receipt of the notification the Administrator will determine, within 60 days of receiving notification, whether the owner or operator can continue to receive prohibited waste in the unit and whether the variance is to be revoked. Should the Administrator determine that migration of hazardous constituents from the unit is occurring or has occurred (i.e., that a release from the unit exceeds Agency-approved health-based or environmental-based levels), the Administrator shall revoke the variance. The Administrator shall also determine whether further examination of any migration is warranted under applicable provisions of part 264 or part 265 of this chapter.

* * * * *

(j) For land treatment units that have not completed the land treatment demonstration required under 40 CFR 264.272, granting of a variance under this section shall be conditioned upon completion of the land treatment demonstration on or before the date two years after the date of granting of this variance, or the Administrator shall revoke the variance.

(k) For land treatment units where concentrations of hazardous constituents in the treatment zone exceed Agency-approved health-based levels for soil ingestion at closure, the facility owner or operator must perform a modeling procedure or a test procedure, which the Agency determines is valid for each type of hazardous constituent present, to demonstrate leachability Dependent on the results of these analyses, the unit's closure and post-closure plans must require either:

(1) Capping with clean soil at the end of the post-closure care period, if the procedures show no reasonable potential for migration of hazardous constituents from the unit at concentrations exceeding Agency-approved health-based levels; or

(2) Removal of hazardous constituents at closure, to concentrations at or below Agency-approved health-based levels for soil ingestion, if hazardous constituents may potentially be released from the unit at concentrations exceeding Agency-approved health-based levels.

(l) For land disposal units that are used to temporarily store prohibited waste, a variance granted under this section shall be conditioned upon the following requirements:

(1) The unit's closure plan must provide for clean closure, both technically and with adequate financial assurance, within a specified time period; and

(2) At closure, the waste must be managed in accordance with the requirements of this part.

* * * * *

(r) On the basis of any information, should the Administrator at any time determine that migration of hazardous constituents from the unit is occurring or has occurred (i.e., that a release from the unit exceeds Agency-approved health-based or environmental-based levels), or that a variance previously granted under this section is for any other reason no longer protective of human health and the environment, the Administrator shall revoke the variance.

* * * * *

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

1. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), and 6926.

2. Section 271.1(j) is proposed to be amended by adding the following entry to Table 1 in chronological order by date of publication in the **Federal Register** to read as follows:

271.1 Purpose and scope.

* * * * *

(j) * * *

[1] These sections were proposed at 56 FR 33490, July 22, 1991. EPA will finalize these sections before the No Migration final rule is published.

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	Federal Register reference	Effective date
*	*	*	*
[Insert date of final publication]	Land Disposal Restrictions "No Migration" Variances.	[Insert page citation of final rule.]	[Insert effective date of final rule.]

* * * * *

[FR Doc. 92-18561 Filed 8-10-92; 8:45 am]
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federal register

Tuesday
August 11, 1992

Part IV

Department of Education

Educational Research Grant Program—State Systemic Educational Reforms; Notice

DEPARTMENT OF EDUCATION

Educational Research Grant Program—State Systemic Educational Reforms

AGENCY: Department of Education

ACTION: Notice of proposed priorities for fiscal years 1993 and 1994

SUMMARY: Under the Educational Research Grant Program the Secretary proposes priorities for fiscal years 1993 and 1994. This proposal would give priority to projects to assist in research, development, and demonstration related to State curriculum frameworks, kindergarten through grade 12 (K–12), in English, mathematics, science, history, geography, civics, and the arts. The Secretary takes this action to focus Federal financial assistance on State curriculum frameworks, tied to world-class standards, as the basis for systemic reform.

DATES: Comments must be received on or before September 10, 1992.

ADDRESSES: All comments concerning these proposed priorities should be addressed to Paul Gagnon, U.S. Department of Education, 555 New Jersey Avenue, NW., room 522, Washington, DC 20208–5524.

FOR FURTHER INFORMATION CONTACT: Shirley Steele or Jaymie Lewis, U.S. Department of Education, 555 New Jersey Avenue, NW., room 522, Washington, DC 20208–5524. Telephone: (202) 219–1496. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: The Educational Research Grant Program supports scientific inquiry designed to advance educational theory and practice. The program is authorized under 20 U.S.C. 1221e. The results of scientific inquiry can help move the Nation toward the achievement of the National Education Goals. One of the six National Education Goals calls for students to leave grades four, eight, and twelve having demonstrated competency in challenging subject matter including English, mathematics, science, history, and geography. The President's AMERICA 2000 strategy for helping the Nation achieve the National Education Goals calls for the creation of world-class national standards for student achievement and for a system of improved assessments tied to the standards. The Secretary believes this strategy should be expanded beyond the core subjects to include civics and the arts.

The National Council on Education Standards and Testing, a congressionally created group of 32 individuals charged with investigating the desirability and feasibility of national standards and improved assessment, issued its report on January 24, 1992. The report called for the development of world-class national standards and a national system of voluntary assessments as urgently needed steps in reforming American education.

The feasibility of setting national standards and their effectiveness in encouraging State and local reform have been demonstrated by a number of national professional organizations. Recently the National Council of Teachers of Mathematics developed national standards for what students should know and be able to do in mathematics. While there do not exist fully developed national standards for K–12 in English, science, history, geography, civics, and the arts, considerable work has been done by a variety of organizations toward development of these standards.

World-class standards that define what students should know and be able to do provide the foundation for systemic reform. State curriculum frameworks serve as the bridge between these standards and the classroom by providing guidelines for the content of the curriculum and for how that content should be organized and presented. They provide the guidelines for curriculum and course design at the district, school, and classroom levels. New or improved assessments of student performance will indicate how well students are doing relative to the standards.

Defining what students in a State should learn is a critical step in the process of ensuring that the State's students are prepared to meet world-class standards. Using research supported by the Department's Research and Development Centers Program and other programs, States are developing curriculum frameworks in one or more subjects that embody high standards and provide guidelines to local schools and districts for the content of what should be taught. Engaging more and more States in this process would help to achieve national consensus on world-class standards for American students and would prepare the way for all students to reach these standards.

Under the proposed priorities, the Secretary proposes that States, or States working with other entities of their own choice, may apply for funding to support projects in one or more of the disciplines cited in this notice. States must participate as lead agents in the design and demonstration of State curriculum frameworks because States bear central responsibility in matters of education. States have the primary responsibility for coordinating efforts to raise general standards, disseminating curriculum frameworks, influencing new directions in teacher education and professional development, and establishing appropriate criteria for teacher certification. A State curriculum framework, accompanied by closely-related plans for teacher education and certification, as well as for professional development and recertification, forms the basis of State systemic reform.

The legislative authority for the Educational Research Grant Programs expires at the end of fiscal year 1992. Congress is now considering reauthorization of this program. However, the Secretary is publishing this notice of proposed priorities to demonstrate his strong support for research that would further the development of State curriculum frameworks. The publication of the notice of final priorities will await the outcome of the reauthorization process.

The Secretary will announce the final priorities in a notice in the **Federal Register.** The final priorities will be determined by responses to this notice, available funds, and other considerations of the Department. Funding of particular projects depends on the availability of funds, the nature of the final priorities, and the quality of the applications received. The publication of these proposed priorities does not preclude the Secretary from proposing additional priorities; nor does it limit the Secretary to funding only these priorities, subject to meeting applicable rulemaking requirements.

Note: This notice of proposed priorities does *not* solicit applications. A notice inviting applications under these competitions will be published in the **Federal Register** concurrent with or following publication of the notice of final priorities.

Priorities

Under 34 CFR 75.105(c)(3) the Secretary proposes to give an absolute preference to applications that meet one of the following priorities. The Secretary proposes to fund under this competition only applications that meet one of these absolute priorities:

Proposed Priorities 1–8

Proposed Priority 1—State Curriculum Frameworks for English

Proposed Priority 2—State Curriculum Frameworks for Mathematics
Proposed Priority 3—State Curriculum Frameworks for Science
Proposed Priority 4—State Curriculum Frameworks for History
Proposed Priority 5—State Curriculum Frameworks for Geography
Proposed Priority 6—State Curriculum Frameworks for Civics
Proposed Priority 7—State Curriculum Frameworks for the Arts
Proposed Priority 8—State Curriculum Frameworks for Two or More of the Disciplines in Proposed Priorities 1–7

These priorities support projects in which States, or States in collaboration with other entities, carry out one or more of the following activities:

(a) Research to support the development of State curriculum frameworks, kindergarten through grade 12 (K–12). The curriculum frameworks must be tied to world-class standards. The results of this research must be made available to others developing curriculum frameworks.

(b) Development of coherent, non-repetitive research-based curriculum frameworks designed to ensure that all children study challenging subject material in every grade, K–12. These curriculum frameworks must—

- Be made available for local schools and districts to implement, or to adapt, for themselves; and
- Form the basis for new approaches to teacher pre-service and in-service education, certification, and recertification.

(c) Demonstration and documentation of the use of curriculum frameworks so that other States, districts, or schools might use them as a basis for developing frameworks suited to their needs.

Projects must involve in their activities college and university subject matter scholars and specialists in pedagogy, as well as teachers and administrators from public or private schools working together as equal collaborators.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding the proposed priorities.

All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in room 522, 555 New Jersey Avenue, NW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Applicable Program Regulations: 34 CFR Part 700

Program Authority: 20 U.S.C. 1221e.

(Catalog of Federal Domestic Assistance Number 84.117, Educational Research Grant Program)

Dated: August 4, 1992.

Lamar Alexander,

Secretary of Education.

[FR Doc. 92–19017 Filed 8–10–92; 8:45 am]

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federal register

Tuesday
August 11, 1992

Part V

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 718 and 720

Adoption of State Standards; State Enforcement Activities; Proposed Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 718 and 720

RIN 1029-AB58

Adoption of State Standards; State Enforcement Activities

AGENCY: The Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the U.S. Department of the Interior (DOI) proposes to remove parts 718 and 720 from the initial regulatory program under the Surface Mining Control and Reclamation Act of 1977 (the Act). Part 718 contains procedures for adoption of State laws and regulations when they prescribe more stringent standards of performance than the general or special performance standards of the initial regulatory program. Part 720 sets forth the regulations governing enforcement activities to be carried out by the States during the initial regulatory program. The provisions in these Parts have been rendered redundant or unnecessary by enactment of the permanent regulatory program.

DATES: *Written Comments:* OSM will accept written comments on the proposed rule until 5 p.m. Eastern time on October 13, 1992.

Public Hearings: Upon request, OSM will hold public hearings on the proposed rule in Washington, DC at 9:30 a.m. local time on September 25, 1992. OSM will accept requests for public hearings until 5 p.m. Eastern time on September 10, 1992. Individuals wishing to attend, but not testify at any hearings should contact the person identified "**FOR FURTHER INFORMATION CONTACT**" beforehand to verify that the hearing will be held.

ADDRESSES: *Written Comments:* Hand deliver to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, room 660, 800 North Capitol Street, NW., Washington, DC; or mail to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 660, 1951 Constitution Avenue NW., Washington DC 20240.

Public Hearings: Department of the Interior Auditorium, 18th and C Streets NW., Washington DC.

Request for public hearings: Submit orally or in writing to the person and address specified under "**FOR FURTHER INFORMATION CONTACT**" by the time specified under "**DATES.**"

FOR FURTHER INFORMATION CONTACT: James L. Hedglin, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue NW., Washington, DC 20240; telephone: (202) 208-2634 (Commercial) or 268-2634 (FTS).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Written Comments

Written comments submitted on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where practical, commenters should submit three copies of their comments. Comments received after the close of the comment period (see "**DATES**") or delivered to an address other than those listed above (see "**ADDRESSES**") may not be considered or included in the Administrative Record for the final rule.

Public Hearings

OSM will hold public hearings on the proposed rule by request only. The times, dates and addresses scheduled for hearings are specified previously in this notice (see "**DATES**" and "**ADDRESSES**").

Any person interested in participating at a hearing at a particular location should inform Mr. Hedglin (see "**FOR FURTHER INFORMATION CONTACT**") either orally or in writing of the desired hearing location by 5 p.m. Eastern time September 10, 1992. If no one has contacted Mr. Hedglin to express an interest in participating in a hearing at a given location by the end of that date, the hearing will not be held. If only one person expresses an interest, a public meeting rather than a hearing may be held and the results included in the Administrative Record.

If a hearing is held, it will continue until all persons wishing to testify have been heard. To assist the transcriber and ensure an accurate record, OSM requests that persons who testify at a hearing provide the transcriber with a copy of their testimony. To assist OSM in preparing appropriate questions, OSM also requests that persons who plan to testify submit to OSM at the address previously specified for the submission of written comments (see "**ADDRESSES**") an advance copy of their testimony.

II. Background

The Surface Mining Control and Reclamation Act of 1977 (the Act), 30 U.S.C. 1201 *et seq.*, was enacted August 3, 1977. Two principal purposes of the Act are to establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations and to assist the States in developing and implementing a program to achieve the purposes of the Act.

The scheme designed by Congress to implement the requirements of the Act consisted of two district regulatory programs on non-Federal and non-Indian lands, one transitional and one permanent. The transitional program, known as the initial program, took effect six months after the enactment of the Act and created a dual inspection and enforcement role for OSM and the States in ensuring compliance with certain key provisions of the Act at all surface coal mining and reclamation operations. The permanent program became effective upon approval by the Secretary of the Interior (the Secretary) of a State regulatory program which demonstrated that a State had the capability of carrying out the provisions of the Act, or where a State did not submit an application for a State program, upon promulgation and implementation of a Federal program meeting the requirements of the Act. The initial program effectively ended upon approval of a State program by the Secretary or when a Federal program was implemented. All coal producing States had either received full or conditional approval of their permanent programs or a Federal program had been implemented by 1983.

To implement the requirements of Sections 502 and 503 of the Act, the Secretary promulgated regulations on December 13, 1977 (42 FR 62639) and March 13, 1978 (44 FR 14902) for the initial and permanent programs respectively. Among the numerous performance standard related and procedural regulations promulgated for the initial program were 30 CFR Part 718—Adoption of State Standards, and Part 720—State Enforcement Activities, both of which are the subject of this rulemaking.

III. Discussion of the Proposed Rule

This proposal to remove Parts 718 and 720 of the initial regulatory program arises as a result of the periodic review of OSM's regulations required by the Department of the Interior Manual 318 DM 9 and the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Agencies must

review their regulations and where regulations are identified which are unnecessary or duplicative, they are required to be removed. Parts 718 and 720 have been identified by OSM as unnecessary for the reasons discussed below.

Part 718—Adoption of State standards

Section 718.1 provided that States could request the Secretary to review any State surface coal mining performance standard in relation to the Federal initial program counterpart to determine which is more stringent and whether the State standard should through rulemaking procedures be adopted as the Federal standard in that State. Since the effective date of the initial program, in 1977, no State has ever made a request to the Secretary under this Section. Sufficient authority exists under the approved State program for a regulatory authority to request a more stringent performance standard determination. Accordingly, OSM believes this Section is no longer necessary.

Section 718.10 sets forth administrative data pertaining to the Paperwork Reduction Act. Removal of part 718 will result in the elimination of the associated burden hours currently charged to the agency.

Part 720—State enforcement activities

Section 720.10 sets forth administrative data pertaining to the Paperwork Reduction Act. Removal of part 720 will result in the elimination of the associated burden hours currently charged to the agency.

Section 720.11 specifies that a State may continue to exercise its authority to enforce State laws, regulations, and permit conditions in place during the interim program so long as compliance with State law, regulations or permit conditions does not preclude compliance with the initial program performance standards. This section is no longer applicable nor has any meaning to initial program minesites since all States where initial program permits remain either adopted regulations that contained the performance standards of the Federal initial regulatory program or became subject to direct regulation by the Office of Surface Mining through a Federal program. Thus, once the States adopted these regulations or came under a Federal program, the possibility of conflict between State laws and regulations and the Federal performance standards became nonexistent.

The requirement under § 720.12 that States incorporate terms in initial program permits that comply with the initial program performance standards is unnecessary because, in accordance with 30 CFR 701.11, any person who conducts surface coal mining operations on or after 8 months from the date of approval of a State program or implementation of a Federal program shall have a permit issued pursuant to the applicable State or Federal program. Thus, issuance of permits pursuant to the initial regulatory program ended in all States upon the adoption of State or Federal permanent programs.

Section 720.13 specifies certain initial regulatory program reporting requirements regarding the condition of mine sites and the issuance of permits. These reporting requirements are obsolete and no longer necessary since the requirements of the initial program ended with the adoption of State or Federal permanent programs. Moreover, the requirements of this section have been carried over into § 840.14 of the permanent program regulations. This section requires that each State make available to OSM upon request, copies of all documents relating to applications for and approvals of existing, new or revised coal exploration approvals or surface coal mining and reclamation operations permits and all documents relating to inspection and enforcement actions. The specified information is currently being made available to all local OSM offices for both initial and permanent program minesites as necessary to evaluate the administration of each State program.

IV. Procedural Matters

Executive Order 12291

The Department of the Interior (DOI) has examined the proposed rule according to the criteria of Executive Order 12291 (February 17, 1981), and has determined that it is not a major rule within the standards established by the Executive Order. Therefore, no regulatory impact analysis is required.

Regulatory Flexibility Act

The Department of the Interior has determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that the proposed rule will not have a significant economic impact on a substantial number of small entities.

Federal Paperwork Reduction Act

There are no information collection requirements in the proposed rule requiring review by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

OSM has prepared a draft environmental assessment, and has made an interim finding that the proposed rule would not significantly affect the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). The draft environmental assessment is on file in the OSM Administrative Record at the address previously specified (see **"ADDRESSES"**). A final environmental assessment will be completed and a finding made of the significance of any resulting impacts prior to promulgation of the final rule.

Executive Order No. 12778

The Department of the Interior has certified to the Office of Management and Budget that these proposed regulations meet the applicable standards provided in section 2(a) and 2(b)(2) of Executive Order 12778.

Author

The author of this proposed rule is James L. Hedglin, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW., Washington DC 20240; telephone (202) 208–2634 (Commercial) or 268–2634 (FTS).

List of Subjects

30 CFR Part 718

Environmental protection, Intergovernmental relations, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 720

Intergovernmental relations, Law enforcement, Reporting and recordkeeping requirements, Surface mining, Underground mining.

Accordingly, it is proposed to remove 30 CFR parts 718 and 720.

Date: June 11, 1992.

Richard Roldan,

Deputy Assistant Secretary for Land and Minerals Management.

Subchapter B—Initial Program Regulations

PART 718—ADOPTION OF STATE STANDARDS

1. Part 718 is removed.

Authority: Secs. 201 and 501, Pub. L. 95–87, 91 Stat. 445 (30 U.S.C. 1201 *et seq.*)

PART 720—STATE ENFORCEMENT ACTIVITIES

2. Part 720 is removed.

Authority: Secs. 201, 501 and 502, Pub. L. 95–87, 91 Stat. 445 (30 U.S.C. 1201 *et seq.*)

[FR Doc. 92–19020 Filed 8–10–92; 8:45 am]
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federal register

Tuesday
August 11, 1992

Part VI

Department of Education

34 CFR Part 99

Family Educational Rights and Privacy; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 99

RIN 1880-AA54

Family Educational Rights and Privacy

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations implementing the Family Educational Rights and Privacy Act (FERPA). These amendments are needed to implement a provision of the Crime Awareness and Campus Security Act of 1990. These proposed regulations would allow institutions of postsecondary education to disclose to an alleged victim of a crime of violence the results of a related disciplinary proceeding instituted against the alleged perpetrator of that crime.

Additionally, the amendments are needed to reflect a change in the enforcement provisions of the existing regulations. Specifically, the Secretary designates a new review board within the Department for the purpose of reviewing and adjudicating complaints of violations of FERPA. Further, several technical amendments are incorporated in the regulations, including a definition of a "timely complaint" and a change in the provision pertaining to the circumstances under which the office designated to administer FERPA notifies the complainant and the educational agency or institution that a complaint has been received and an investigation initiated.

DATES: Comments must be received on or before September 25, 1992.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Ellen Campbell, Family Policy Compliance Office, Office of Human Resources and Administration, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202-4605. Telephone: (202) 732-1807.

FOR FURTHER INFORMATION CONTACT: Ellen Campbell, (202) 732-1807. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: The current FERPA regulations allow educational agencies and institutions to disclose personally identifiable information from a student's education records without the student's consent only under certain conditions. The proposed amendment creates another condition under which an institution of postsecondary education may disclose information from a student's education records without the student's prior written consent. Specifically, this new condition would allow disclosure of the results of a disciplinary proceeding conducted by the institution against an alleged perpetrator of a crime of violence to the alleged victim of that crime. This new condition was created by section 203 of the Crime Awareness and Campus Security Act of 1990, (Public Law 101-542, Title II, section 203; 20 U.S.C. 1232g(b)(6)) which amended FERPA to allow for such a disclosure.

Additionally, the Secretary proposes to amend the regulations to reflect changes in the enforcement provisions under 34 CFR part 99, subpart E. FERPA provides that the Secretary shall designate a review board within the Department for the purpose of reviewing and adjudicating violations of FERPA. In the current regulations, the Education Appeal Board (EAB) serves as the designated review board. Because the EAB is being phased out, the Secretary designates the Office of Administrative Law Judges to act as the review board required to enforce the Act with respect to all "applicable program[s]," as that term is defined in section 400 of the General Education Provisions Act.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. The small entities affected would be small local educational agencies and institutions of postsecondary education. However, these regulations will not have any significant economic impact on the entities affected.

Paperwork Reduction Act of 1980

These proposed regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in the Family Policy Compliance Office, 490 L'Enfant Plaza, SW., 2100 Corridor, Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comments on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 99

Administrative practice and procedure, Education, Family educational rights, Privacy, Parents, Reporting and recordkeeping requirements, Students.

(Catalog of Federal Domestic Assistance Number does not apply.)

Dated: April 21, 1992.

Lamar Alexander,

Secretary of Education.

The Secretary proposes to amend part 99 of title 34 of the Code of Federal Regulations as follows:

PART 99—FAMILY EDUCATIONAL RIGHTS AND PRIVACY

1. The authority citation for part 99 is revised to read as follows:

Authority: 20 U.S.C. 1232g, unless otherwise noted.

2. Section 99.5 is amended by revising the section heading to read as follows:

§ 99.5 What are the rights of students?

* * * * *

§ 99.6 [Amended]

3. In § 99.6, paragraph (a)(5) is amended by removing "maiintained" and adding, in its place, "maintained".

4. Section 99.30 is amended by revising the section heading and paragraph (a) to read as follows:

§ 99.30 Under what conditions is prior consent required to disclose information?

(a) The parent or eligible student shall provide a signed and dated written consent before an educational agency or institution discloses personally identifiable information from the

student's education records, except as provided in § 99.31.

* * * * *

5. Section 99.31 is amended by adding a new paragraph (a)(13), revising paragraph (b), and revising the authority citation to read as follows:

§ 99.31 Under what conditions is prior consent not required to disclose information?

(a) * * *

(13) The disclosure is to an alleged victim of any crime of violence, as that term is defined in section 16 of title 18, United States Code, of the results of any disciplinary proceeding conducted by an institution of postsecondary education against the alleged perpetrator of that crime with respect to that crime.

(b) This section does not forbid an educational agency or institution from disclosing, nor does it require an educational agency or institution to disclose, personally identifiable information from the education records of a student to any parties under paragraphs (a)(1) through (11) and (13) of this section.

(Authority: 20 U.S.C. 1232g(a)(5)(A), (b)(1), (b)(2)(B) and (b)(6))

6. Section 99.60 is amended by revising the heading and paragraphs (a) and (c) to read as follows:

§ 99.60 What functions has the Secretary delegated to the Office and to the Office of Administrative Law Judges?

(a) For the purposes of this subpart, "Office" means the Family Policy Compliance Office, U.S. Department of Education.

* * * * *

(c) The Secretary designates the Office of Administrative Law Judges to act as the Review Board required under the Act to enforce the Act with respect to all applicable programs. The term "applicable program" is defined in section 400 of the General Education Provisions Act.

7. Section 99.63 is revised to read as follows:

§ 99.63 Where are complaints filed?

A person may file a written complaint with the Office regarding an alleged violation under the Act and this part. The Office's address is: Family Policy Compliance Office, U.S. Department of Education, Washington, DC 20202–4605.

(Authority: 20 U.S.C. 1232g(g))

8. Section 99.64 is amended by adding new paragraphs (c) and (d) to read as follows:

§ 99.64 What is the complaint procedure?

* * * * *

(c) A timely complaint is defined as an allegation of a violation of the Act that is submitted to the Office within 180 days of the date of the alleged violation or of the date that the complainant knew or reasonably should have known of the alleged violation.

(d) The Office extends the time limit in this section if the complainant shows that he or she was prevented by circumstances beyond the complainant's control from submitting the matter within the time limit, or for other reasons considered sufficient by the Office.

9. Section 99.65 is revised to read as follows:

§ 99.65 What is the content of the notice of complaint issued by the Office?

(a) The Office notifies the complainant and the educational agency or institution in writing if it initiates an investigation of a complaint under § 99.64(b). The notice to the educational agency or institution—

(1) Includes the substance of the alleged violation; and

(2) Asks the agency or institution to submit a written response to the complaint.

(b) The Office notifies the complainant if it does not initiate an investigation of a complaint because the complaint fails to meet the requirements of § 99.64.

(Authority: 20 U.S.C. 1232g(g))

10. Section 99.67 is amended by revising paragraph (a) and the authority citation to read as follows:

§ 99.67 How does the Secretary enforce decisions?

(a) If the educational agency or institution does not comply during the period of time set under § 99.66(c), the Secretary may, in accordance with Part E of the General Education Provisions Act—

(1) Withhold further payments under any applicable program;

(2) Issue a complaint to compel compliance through a cease-and-desist order; or

(3) Terminate eligibility to receive funding under any applicable program.

* * * * *

(Authority: 20 U.S.C. 1232g(f); 20 U.S.C. 1234)

[FR Doc. 92–18996 Filed 8–10–92; 8:45 am]
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August 11, 1992

Part VII

Department of the Interior

Bureau of Land Management

43 CFR Part 3100

Promotion of Development, Reduction of Royalty on Stripper Wells; Final Rule

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3100

[WO-610-02-4110-24 1A; Circular No. 2644]

RIN 1004-AC00

Promotion of Development, Reduction of Royalty on Stripper Wells

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule amends 43 CFR 3103.4–1 relating to waiver, suspension, or reduction of rental, royalty, or minimum royalty. The purpose of this amendment is to establish conditions under which an operator or an owner of a stripper oil well property can obtain a reduction in the royalty rate. This action is necessary in order to encourage operators of Federal stripper oil properties to place marginal or currently uneconomical shut-in oil wells back in production and to provide the economic incentive to increase production by reworking such wells, drilling new wells, and/or by implementing enhanced oil recovery projects. It contains procedures for operators to follow in determining whether a property qualifies and in calculating a royalty rate. It also contains a form with which to notify the Minerals Management Service (MMS) of participation in this program.

EFFECTIVE DATE: September 10, 1992.

ADDRESSES: Inquiries or suggestions should be sent to: Director (610), Bureau of Land Management, room 501 L Street Building, Department of the Interior, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Erick Kaarlela, (202) 653–2127.

SUPPLEMENTARY INFORMATION: A proposed rule for royalty reduction of stripper oil properties was published in the **Federal Register** on March 11, 1992 (57 FR 8605), with a 30-day comment period. Comments were received from 71 sources, which included 6 industry associations, 41 industrial entities, 10 individuals, and 14 Government entities.

The majority of the comments stated that the proposal was beneficial. Fifty-three—over two-thirds of the respondents—supported the proposed rule. Five of the comments opposed the rule. The remainder primarily requested clarifications.

Several correspondents stated that they did not understand the calculations used to establish the qualifying production rate. However, several other comments stated that the calculations and procedures were simple to understand. No change is made in the final rule, but, to help alleviate confusion, additional guidance concerning the calculations and procedures will be provided at workshops the Bureau of Land Management (BLM) and MMS will conduct upon final implementation of this rule.

Many comments suggested that the proposed rule be expanded to include stripper gas wells. The Department is currently considering a similar royalty rate reduction for stripper gas well properties. However, stripper gas wells are not part of this rule.

Several comments expressed uncertainty whether the proposed rule was applicable to Indian leases. This rule applies only to Federal properties. Indian leases are not considered Federal properties for purposes of this rule, and Indian leases are not covered.

Several comments noted that the notification procedures for discontinuing the royalty reduction when oil prices reach $28 per barrel in section 3103.4–1(d)(4) were vague. We agree, and therefore the rule has been amended to provide that BLM and MMS will do the calculations and notify the affected parties if and when this price provision becomes applicable.

Several comments expressed confusion on the notification process for royalty rate calculations. The rule has been amended by adding as an appendix a sample MMS Form Identification Number MMS–4377, Stripper Royalty Rate Reduction Notification, which is to be used for this notification, and providing the appropriate address to which it should be sent.

One comment stated that the description of eligible wells in section 3103.4–1(c)(2) was not specific enough. The rule has been amended to make it clear that only wells integral to production can be counted.

Several comments indicated misunderstanding of what constitutes an injection well, as provided in section 3103.4–1(c)(4) and particularly the use of the term "fluid" in this context. "Fluid" for purposes of this regulation includes both gas and liquid and the provision has been expanded by inserting "including reservoir pressure maintenance operations" at the end of the provision.

Several comments expressed confusion concerning the term "oil well" versus "completion" as described in section 3103.4–1(c)(3). The final rule has been changed to clarify this by redefining "oil well" as an oil completion.

Several comments expressed uncertainty as to the requirements for qualification and time frames for subsequent qualification periods. The final rule has been amended at section 3103.4–1(d)(3)(i)(B) to clarify the definition of qualifying properties and the use of subsequent qualifying periods.

Several comments stated that the definition of oil well should match that of State regulatory agencies. In the interest of national uniformity, these comments are rejected. One comment stated that the definition of oil well (completion) was too restrictive and that marginal wells producing casinghead gas where the energy equivalent exceeds that of oil would not qualify under the proposed rule. Section 3103.4–1(c)(3) has been amended to include oil completions that produce less than 60 MCF of gas per day.

Some comments asked whether new wells drilled on the property would benefit from the reduced royalty rate. The intent of the rule is that all wells on a stripper well property are to be included in any royalty reduction. Reduced royalty rates are not for individual stripper oil wells but for stripper oil well properties.

Several comments asked the types of lease to which the proposed rule applies. The rule applies to every lease regardless of the royalty schedule attached to the lease. Section 3103.4–1(c)(1) has been amended to make this clear.

Several comments requested clarification of the term "producing/injection day." If a completion produces oil or injects fluids for any portion of a day, it is counted as a whole producing day. Section 3103.4–1(d)(2) has been amended to make this point clear.

Several comments suggested either an increase or a decrease in the 15-barrel threshold stated in section 3103.4–1(c)(1). Many pointed to definitions in State law or the now-repealed crude oil Windfall Profits Tax Act. The threshold is appropriate and conforms to the latest relevant congressional enactment, the Omnibus Budget Reconciliation Act of 1990, which defined marginal wells for tax purposes as those producing less than 15 barrels per day. Therefore, the 15-barrel threshold is retained in the final rule.

Several comments stated that the 5-year test period was too short for the royalty rate reduction to be effective, while another suggested that it is unnecessarily long. The 5-year period is sufficient to see whether the royalty reduction results in additional oil

production or an increase in activity. Any shorter period would unduly reduce the incentive to develop additional reserves, or engage in costly enhanced recovery. Therefore, no change was made.

Several comments questioned MMS and BLM capabilities to administer this program. The BLM and MMS are cooperating closely in the administration of the royalty rate reduction program. The MMS will have principal monitoring responsibilities. The MMS is analyzing the impacts and outlining the internal processing of the applications that it will receive. Additionally, the personnel and system resource impacts have been identified. The majority of monitoring to be done by the MMS will use existing computerized financial processing and accounting systems. The MMS and the BLM understand their respective roles and responsibilities and are confident that the program will be successfully administered.

Several comments addressed mixed ownership in properties and how this would be handled under the rule. Although all eligible wells on the property will be used in considering whether the property qualifies for royalty rate reduction, only Federal lands within a qualifying property will be eligible for the royalty reduction. Section 3103.4–1(d)(3)(ii) has been amended to clarify this issue.

A comment suggested that total production referred to in section 3103.4–1(d)(2) should include production used on the lease. The provision for calculation of total production has been amended to make it clear that it refers to all production regardless of its disposition.

Another comment was concerned that the proposal would extend to properties producing significant quantities of gas. Applicable wells include only those classified as oil wells and those producing less than 60 MCF of gas per day. However, the royalty rate reduction is only applicable to oil production. Well classifications can change during the life of a well, and BLM will review for proper well classification and production rates during the program.

One comment suggested that the rule allow for the use of Form MMS–4054 (Oil and Gas Operations Report) in lieu of Form MMS–3160 for determining the property average daily production rate. The final rule has been amended to allow the use of either Form MMS–3160 or Form MMS–4054, whichever is appropriate.

Several comments suggested that the notification and filing requirements need to be further clarified. The final rule includes specific notification instructions in section 3103.4–1(d)(3)(iii)(B) and a notification form to facilitate the filing of notices by the operators.

Some comments asked whether condensate production from oil wells, which is normally included in the oil volume as reported on Form MMS–3160, must now be excluded and reported separately. Condensate production will continue to be considered part of the oil volume for reporting purposes on Form MMS–3160. However, only oil is eligible for the royalty rate reduction.

One comment opposed this type of incentive for only a limited or special segment of the oil and gas industry, and suggested that the incentive should apply to all Federal oil properties. A royalty rate reduction for stripper oil properties is warranted in order to encourage the greatest ultimate recovery of oil from those properties. Section 39 of the Mineral Leasing Act allows royalty reduction only in cases where it is necessary to promote development or where leases cannot be successfully operated at the current royalty rate. There has been no demonstration that royalty reduction is necessary for all Federal leases, regardless of their rate of production, for these purposes.

One comment asked if the reduced royalty applicable to the Federal leases within communitization agreements or unit participating areas would be based on the qualifying status of the entire unit or communitization agreement as a property. This is correct. The property may include Indian and/or non-Federal lands for qualification purposes, but the reduced royalty only applies to the Federal leases in those agreements. Section 3103.4–1(d)(3)(ii) has been amended in the final rule to make this clear.

Several comments were received on the royalty rate formula stated in section 3103.4–1(d)(3)(ii). One comment suggested amending the formula by including oil price and operating costs differentials. This recommendation is not adopted in the final rule, because it would be overly complex and administratively cumbersome.

One comment questioned why the proposed rule counted injection wells in calculating the qualifying production rate. Injection wells are included in these calculations because, like producing oil wells, injection wells are an integral part of production operations and are used to enhance oil recovery. Therefore, they are appropriately included when computing the royalty rate.

One comment questioned the procedure for calculating applicable daily property production rates through "rounding down," exemplified in section 3103.4–1(d)(ii). Truncating decimals is an appropriate procedure, because it is consistent with the objective of providing an incentive and will be insignificant in the overall results.

One comment asked the rationale for reducing the royalty rate 0.8 percent for each barrel below 15 barrels of oil per day. The 0.8 percent represents a straight line per unit rate of decline of production from 12.5 percent to 0.5 percent; i.e., 11.7 percent is paid on 14 barrels, 10.9 percent is paid on 13 barrels, and so on. A gradual straight line reduction in royalty rate is simple to administer and should discourage manipulation of the qualifying production volumes.

One comment asked why the royalty rate was proposed in section 3103.4–1(d)(3)(iii)(C) to be capped at a reduced rate as determined from the initial qualifying period. The royalty rate will not increase beyond the rate established in the qualifying period, regardless of the amount of future production, in order to provide a continuing incentive to operators to increase investment in their oil properties and to obtain additional oil production over the entire life of the program.

One comment asked about the possibility of manipulation of lease operations in order to obtain the benefits of a royalty rate reduction. Manipulation of lease operations is possible. In coordination with MMS, BLM will be monitoring production and investigating anomalies. Lessees found to have manipulated production figures will be dropped from the program as provided in section 3103.4–1.(d)(3)(iv).

One comment asked why there is no regulatory language limiting the program to 5 years. The intent of the rule is not to limit this program to 5 years but merely to review it after 5 years. However, a provision has been added to the final rule in section 3103.4–1.(d)(3)(iv) allowing the Secretary to terminate the royalty reduction program at any time after 5 years.

Several comments questioned why the threshold for royalty rate reduction is set at $28 a barrel. This amount is an appropriate economic cutoff for the royalty rate reduction; it was used in the Omnibus Budget Reconciliation Act of 1990 tax revisions for marginal wells that had similar objectives.

Several comments asked why we did not address the deficiencies in the current royalty rate reduction process found at 43 CFR 3103.4–1 instead of proposing an across-the-board royalty rate reduction. Streamlining the current

process was considered, but the method adopted in the final rule will provide more of an incentive to operators to continue to produce these stripper oil properties by allowing them to make a profit and not just break even as required by the current regulations.

Several comments requested clarification of the term "routine operational and economic factors" as used in section 3103.4–1(d)(3)(iv). The Department interprets these as normal activities related to oil field operations and clearly not being conducted for the purpose of manipulating production. There is no need for further clarification of this provision, as the words used are used in their common, everyday meaning.

Several comments were received from State agencies about the possible Federal and State revenue losses that will result from the proposed royalty rate reduction. These comments typically reflected concern that the royalty rate reduction will merely generate a large initial Federal and State royalty loss with little offsetting royalty and tax gain from a projected subsequent increase in production. The comments also indicated the related concern that administrative costs and problems will be greater than anticipated and that these costs will be passed on to the States. The following are examples of these concerns. One agency calculated the most favorable combined Federal and State revenue loss at a substantial $20 million and did not consider offsetting this with Federal and State tax gains. Similarly, another predicted that the combined royalty loss will be around $29 million because it does not expect offsetting royalty and tax revenues from production increases. It also predicted that the costs of administering the program will be much larger than expected. A third State official stated that the projected increase in crude oil production as a result of the royalty reduction will not occur as predicted, so that the royalty reduction will fail to produce tax and royalty increases to help offset the initial loss.

Likewise, another State office stated that the projections of production increases from the royalty rate reduction were too optimistic and predicted less tax and revenue offsets to the initial royalty loss. It noted, for example, that a substantial part of the royalty reduction in one State will go to a few old, large oil fields that cannot be expected to increase oil production over what is currently, being produced.

The Department of the Interior recognizes that there will be some royalty losses to Federal and State Governments and estimated these losses to determine their possible magnitude. The Secretary chose to use royalty reduction specifically in order to increase recovery of the oil and gas resource to benefit the public interest rather than to maximize revenues to the Federal and State governments, and is fully authorized to do so by Section 39 of the Mineral Leasing Act, which was amended in 1946 to increase the Secretary's discretion in this regard. The Department estimated there to be a likely Federal gain from the royalty reduction program of $3.3 million, the States' loss to be $6 million and the benefit to the industry, largely from increased production, to be $49.1 million. The accuracy of these estimates is dependent on the production response of the industry, but the estimates are believed to be reasonable based on the results of simulating a similar royalty reduction for the Federal portion of the New Mexico reservoirs in the Department of Energy's (DOE) Tertiary Oil Recovery Information System (TORIS) model. The difference in impact on the State and Federal governments is not a product of any feature of the rule. The net State losses, from their share of the reduced Federal royalties, are not offset to the same extent as Federal losses, because State tax rates are generally lower than Federal rates. Furthermore, the indirect benefits associated with increased production, such as continued or increased employment in local communities, will help offset losses.

In the face of this disagreement over estimates between the comments and Department, the estimates have been re-examined. After further review, we find our estimates reasonable and find no reason to revise them. There is a risk that the losses will come in higher (or lower) than our estimates, but we view this as an acceptable risk in attempting to stimulate the production of Federal stripper oil leases and ensure that the maximum amount of economically recoverable oil is obtained from the reservoir.

One comment suggested that the abandonment rate described in the proposal was not significant enough to justify the proposed relief. The abandonment rate alone may not serve as an accurate indicator of the economy of the industry because many wells are shut-in while awaiting abandonment and are not counted as abandoned: There are 6,000 shut-in wells and 3,000 temporarily abandoned wells on Federal lands as of September 30, 1991, accounting for over 25 percent of all wells on Federal lands. The increases in recoverable reserves and production indicated by the DOE's "TORIS" model demonstrate that development would be promoted through this relief.

One comment questioned the statement in the preamble of the proposed rule that money currently spent in abandoning wells can instead be used toward production, noting that operators will eventually need to abandon wells and will retain funds therefor. It is true that the reduction will not eliminate the ultimate need to abandon the well. However, it will allow for increased cash flow at the present time by avoiding simultaneous abandonment of many wells and by generating revenue from additional production.

One comment stated that the Department proposes to count all wells "drilled in the earth" in determining the eligibility of a property. The rule provides for counting only those wells that produced or that had fluid injected into them during the qualifying or subsequent 12-month period.

Some comments stated that the proposal to use historical information to determine eligibility would allow operators who are currently economically healthy to be eligible for relief. There may be some isolated cases that can fall into this category, but it is unlikely that there would be a significant change in production in the brief time from the qualifying period to the present. Furthermore, the use of the qualifying period is administratively simple, can be implemented without any new administrative mechanism, and discourages manipulation.

One comment stated that on the one hand, the proposal served to discourage, not encourage, increased production, while on the other hand, it also locks in relief to properties that may have future production increases such that they no longer meet initial qualification production levels. Operators would not likely reduce their production and subsequent revenues to obtain a lower royalty rate, because the use of a linear sliding scale minimizes any gains from lower royalties, and the cost of such manipulation of production would outweigh those small royalty gains. Additionally, a property will enjoy the benefit of the relief even when its production rose above the stripper level. The rationale for this relief is to encourage investment to promote development and sustain increased production.

One comment stated that the rule provided no justification for allowing the lessee to retain the reduced rate for 6 months after the market has reached $28.00/bbl, as provided in section

3103.4–1(d)(4). A 6-month period is necessary to allow the lessee to adjust operations to take into account the higher royalty rate.

One comment stated that the royalty reduction would not minimize the necessity of drilling new wells. The proposed rule did not imply that new wells may not be needed for extension of current reservoirs or the development of new reservoirs, but rather proposed a royalty reduction that will allow existing wells to have extended production lives, and will minimize the need to drill replacement wells in existing reservoirs.

One comment expressed concern that some major producers who have de-emphasized their investment in domestic exploration and production would receive substantial benefits under the proposed royalty reduction rate. The proposed royalty reduction rate will provide incentives for current domestic producers to increase production as well as an incentive for a continued emphasis on domestic exploration and production. The analysis undertaken by the Department of Energy found the royalty reduction will stimulate a 29 percent increase in production from stripper wells on Federal lands.

One comment suggested that relief to Federal leaseholders alone in unfair to private stripper well operators. It is beyond the Department's authority to provide relief to private holdings. The relief provided to Federal lessees will not affect the competitive position of any other producer, the production from Federal stripper well properties not being large enough to affect the world price of oil or other costs of production.

One comment noted that lessees would be entitled to relief even if they chose to shut-in or abandon wells. The Department never intended to prevent all abandonment, but the role provides an incentive to producers for more complete recovery of remaining reserves.

One comment noted that the use of the 12-month period ending July 31, 1991, as the initial qualifying period in section 3103.4–1(d)(3)(i)(B) may permit lessees to use shut-in wells to determine their eligibility even if they currently would not meet the definition of well properties. The number of properties in which such shut-ins have occurred is not significant in comparison to the benefits afforded by using historical data.

One comment stated that the average cost savings per property would be insufficient to promote development. Another stated that other factors, such as pricing and environmental concerns, have a greater impact on the operator's decision to continue production. The Department's estimate, based on DOE's TORIS Model, is that there will be an increase of 4.7 million barrels in the oil produced per year. While this rule does not address all of the relevant factors, it will have a very significant impact.

One comment noted that the rule does not assert that all Federal stripper well properties qualify for relief under the standards of Section 39. The class of eligible wells defined in this rule reasonably approximates the class in which there is a substantial probability that recoverable reserves will be produced that otherwise would not be produced because of the margin of profitability at the market price and current royalty rates that have prevailed over the last 5 years. Therefore, the relief provided by the rule encourages the greatest ultimate recovery and promotes development of marginal properties, so that this rule is consistent with the statute. Further, timely achievement of this increased recovery would not be possible if royalty reduction requests for these well properties are processed on a property-by-property basis under the existing regulations, because many of the operators may have to shut-in wells before all such requests could be prepared, analyzed, and approved.

One comment questioned the Department's ability to detect manipulation due to the current MMS audit procedures focusing on larger producing properties. The strategy for detecting manipulation does not depend on royalty audit, but it will be focused on identifying anomalies in production levels.

Two comments stated that the finding in the regulatory preamble is insufficient to support the exercising of the Secretary's authority under section 39 of the Mineral Leasing Act (MLA), as amended. One comment questioned the Department's authority for granting royalty relief simultaneously to all stripper well properties. The royalty rate reduction is necessary to promote development of the substantial majority of stripper oil well properties that cannot economically be fully developed at the current royalty rate and market price. As noted in the preamble of the proposed rule, stripper well production is important to maintaining United States production, which has been declining during the last 5 years. Also, there has been an increase in the number of shut-in and abandoned wells. In light of this, and the modeling of the Department of Energy, the Department estimates that the royalty rate reduction will increase production from stripper well leases by 4.7 million barrels of oil per year over the test period. These findings meet the requirements in Section 39 of the MLA, which allows the Secretary to grant royalty rate reductions "for purposes of encouraging the greatest ultimate recovery of * * * oil * * * and in the interest of conservation of natural resources * * * whenever in his judgment it is necessary to do so in order to promote development * * *."

One comment challenged the adequacy of the Secretary's findings to support "nationwide" royalty rate reductions, citing the Interior Board of Land Appeals (IBLA) decision in *Peabody Coal Co.*, 93 IBLA 317 (1986), for the proposition that there must be a showing of "a reasonable probability operation would cease or development, recovery, or conservation of the resources would be jeopardized." 93 IBLA at 327. The rule does not comprise a nationwide royalty rate reduction, but rather provides for reductions targeted on properties with marginal production in which the economics of operating at today's oil prices while paying full royalties dictate abandonment before technically recoverable resources have been produced. There is a reasonable probability that recovery would be jeopardized or operations cease, based on actual experience and projections of the DOE TORIS model. The correspondent's interpretation of *Peabody* was rejected by the Interior Board of Land Appeals in *State of Wyoming*, 117 IBLA 316, 322, affirmed U.S. Dist. Ct. (Wyo.) No. CV–0097–B, filed December 16, 1991, in which IBLA stated:

> The State has also urged that the Department has consistently interpreted 30 U.S.C. 209 (1988) to allow a royalty reduction to promote development *only when the development could not otherwise economically occur.* * * * Neither the statute nor the regulations limit the Secretary's discretion to this criterion. Nor did we hold in *Peabody* or any other Board decision that the *only* circumstance authorizing royalty reduction to promote development is when development cannot otherwise economically occur. To so hold would render the section 209 language "whenever * * * necessary * * * to promote development" meaningless. As noted in Solicitor's Opinion, M–36920, 87 I.D. at 73, this language was added to section 209 "as an *alternative* to finding that the lease 'cannot be successfully operated' " and gave the Secretary "*greater* discretion in granting relief." (Emphasis added.)

A comment suggested that it may be in the national interest to allow wells to remain shut-in to await better economics to resume production. The comment also faulted the Department for not showing what percentage of Federal leases are at risk of permanent

loss of production or the "break point" for economic survival of a lease. The comment further accused the Department of seeking the reduction to test the effect of royalty reduction without a rational basis at this time for determining the amount of reduction "necessary" for development. The comments are not adopted in the final rule. The national interest is not served by shutting in wells prematurely. Either such wells are left unplugged with the attendant risk to the environment, or they are permanently plugged making re-entry a proposition far too expensive for stripper well production rates. Leaving wells shut-in for long periods of time increases the risk of damaging the reservoir and fresh water zones because of possible casing deterioration or other factors, as well as possibly making it cost prohibitive to re-enter either to resume production or to plug and abandon the well permanently. The proposed rule did show that an appreciable percentage of producing Federal leases (15,500 of 23,000) were stripper wells at risk of permanent loss of production under current market conditions. The breakpoint for such stripper properties varies with the level of production, and therefore the Secretary has decided to adopt a sliding scale for determining the appropriate royalty at each level of production.

A comment suggested that the Secretary is limited to reducing royalties on a property-by-property basis upon application of the lessee and a specific showing of hardship or need, because otherwise the power to reduce royalties would infringe the responsibility of Congress to establish minimum royalty rates. For this proposition, the comment relied on provisions of the original section 17 of the Mineral Leasing Act concerning stripper wells that have since been repealed. The comment also relied heavily on the legislative history of a 1982 amendment of section 30 creating a royalty reduction mechanism for relinquished leases. The reduction is approved on the terms of a 1946 amendment of section 39 authorizing reductions the Secretary determines to be necessary to promote development. Neither provisions long since repealed nor provisions added to another part of the law 35 years later provide guidance, much less govern, with respect to the meaning of the 1946 language of section 39. Section 39 itself does not limit the Secretary to lease-by-lease determinations. Nor, as suggested by the comment, should the existing regulations establishing one mechanism for royalty rate reduction be read to limit the Secretary to that mechanism alone, when the Secretary finds a determination for a class or group of leases to be appropriate in the interest of maximizing ultimate recovery from those leases. In exercising discretionary authority under section 39, the Secretary is not bound to observe the minimum royalties specified in statute. *Solicitor's Opinion, Reduction of Production Royalties Below Statutory Minimum*, M-36920, 87 I.D. 69 (1979).

Determination

After consideration of the comments received, it is determined that a royalty reduction on oil from low production leases is necessary to promote development, encourage the greatest ultimate recovery of oil, and serve the interest of conserving natural resources. The national interest would be served, in a time of increasing dependence on imported fuel and a weak domestic oil industry, by greater production from present Federal oil leases of the oil that it is technically feasible to produce. A significant number of leases with production averaging less than 15 barrels per well-day contain wells that have been shut in or abandoned over the last 5 years from which additional oil could have been recovered. The expected cumulative effect of premature abandonments and foregone investments in enhanced recovery or new drilling on stripper well properties will diminish United States production 4.7 million barrels below what can be achieved by adoption of this rule. At the low market prices for crude oil that have prevailed for the last 5 years and that are expected in the next few years, the current royalty rate does not permit a profit margin on low production wells that makes it economical to maximize oil recovery. In addition, the incentive to produce incremental oil declines as the average daily production falls.

This determination is based on an analysis of the DOE's Tertiary Oil Recovery Information System modeling of certain reservoirs with stripper oil properties undertaken at the request of the Department of the Interior. The modeling indicated that there will be an increase in production of 4.7 million barrels per year if this royalty reduction initiative is adopted. Accordingly, establishing sliding scale royalty reduction rates, progressively reducing the royalty rate as average production declines below 15 barrels a day, will delay the abandonment of stripper wells, secure additional production therefrom, and increase the level of production from stripper properties by creating incentives for additional drilling and enhanced recovery programs. This determination is consistent with Congress' decision in the 1990 Omnibus Budget Reconciliation Act to afford tax relief to operators of stripper well properties. Furthermore, timely action to prevent premature abandonment, with the attendant risks of damage to reservoirs and costs of re-entry, requires immediately offering relief to all properties producing less than 15 barrels per well-day rather than relying on property-by-property determinations.

The principal author of this final rule is Joe Lara of the Division of Fluid Minerals, assisted by the staff of the Division of Legislation and Regulatory Management, BLM, and the MMS.

It is hereby determined that this final rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required. The BLM has determined that this final rule is categorically excluded from further environmental review pursuant to 516 Departmental Manual (DM), chapter 2, appendix 1, Item 1.10, and appendix 5, Item 5.4.B(6), and that the rule would not significantly affect the 10 criteria for exceptions listed in 516 DM 2, appendix 2. Pursuant to the Council on Environmental Quality regulations (40 CFR 1508.4) and environmental policies and procedures of the Department of the Interior, "categorical exclusions" means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

The Department of the Interior has determined under Executive Order 12291 that this document is not a major rule. A major rule is any regulation that is likely to result in an annual effect on the economy of $100 million or more, a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Further, the Department has determined under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) that it will not have a significant economic

impact on a substantial number of small entities.

The Department certifies that this final rule does not represent a governmental action capable of interference with constitutionally protected property rights. The rule does not allow or require the taking of any property without due process. Therefore, as required by Executive Order 12630, the Department of the Interior has determined that the rule would not cause a taking of private property.

The information collection requirement(s) contained in § 3103.4–1 have been approved by the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* and assigned clearance numbers 1004–0145 and 1010–0090.

The Department has certified to the Office of Management and Budget that these proposed regulations meet the applicable standards provided in sections 1(a) and 2(b)(2) of Executive Order 12778.

List of Subjects for 43 CFR Part 3100

Land Management Bureau, Public Lands—Mineral resources, Oil and gas production, Mineral royalties.

For the reasons stated in the Preamble, and under the authorities cited below, part 3100, group 3100, subchapter C, chapter II of title 43 of the Code of Federal Regulations is amended as set forth below:

Dated: August 4, 1992.

Richard Roldan,

Deputy Assistant Secretary of the Interior.

PART 3100—ONSHORE OIL AND GAS LEASING; GENERAL

1. The authority citation for part 3100 is revised to read as follows:

Authority: 30 U.S.C. 181, *et seq.*, 30 U.S.C. 351–359.

Subpart 3103—Fees, Rentals and Royalty

2. Section 3100.0–9 is added to read as follows:

§ 3100.0–9 Information collection.

(a)(1) The collections of information contained in § 3103.4–1(b) have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and are among the collections assigned clearance number 1004–0145. The information will be used to determine whether an oil and gas operator or owner may obtain a reduction in the royalty rate. Response is required to obtain a benefit in accordance with 30 U.S.C. 181, *et seq.*, and 30 U.S.C. 351–359.

(2) Public reporting burden for the information collections assigned clearance number 1004–0145 is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer (783), Bureau of Land Management, Washington, DC 20240, and the Office of Management and Budget, Paperwork Reduction Project, 1004–0145, Washington, DC 20503.

(b)(1) The collections of information contained in § 3103.4–1(c) and (d) have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1010–0090. The information will be used to determine whether an oil and gas lessee may obtain a reduction in the royalty rate. Response is required to obtain a benefit in accordance with 30 U.S.C. 181, *et seq.*, and 30 U.S.C. 351–359.

(2) Public reporting burden for this information is estimated to average ½ hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer, Minerals Management Service (Mail Stop 2300), 381 Elden Street, Herndon, VA 22070–4817, and the Office of Management and Budget, Paperwork Reduction Project, 1010–0090, Washington, DC 20503.

3. Section 3103.4–1 is amended by redesignating paragraphs (c) and (d) as paragraphs (b)(3) and (e) respectively, revising paragraph (b)(1), and adding new paragraphs (c) and (d) to read as follows:

§ 3103.4–1 Waiver, suspension, or reduction of rental, royalty, or minimum royalty.

* * * * *

(b)(1) An application for the above benefits on other than stripper oil well properties shall be filed in the proper BLM office. It shall contain the serial numbers of the leases, the names of the record title holders, operating rights owners (sublessees), and operators for each lease, the description of lands by legal subdivision and a description of the relief requested.

* * * * *

(c)(1) A stripper well property is any Federal lease or portion thereof segregated for royalty purposes, a communitization agreement, or a participating area of a unit agreement, operated by the same operator, that produces an average of less than 15 barrels of oil per eligible well per well-day for the qualifying period.

(2) An eligible well is an oil well that produces or an injection well that injects and is integral to production for any period of time during the qualifying or subsequent 12-month period.

(3) An oil completion is a completion from which the energy equivalent of the oil produced exceeds the energy equivalent of the gas produced (including the entrained liquid hydrocarbons) or any completion producing oil and less than 60 MCF of gas per day.

(4) An injection well is a well that injects a fluid for secondary or enhanced oil recovery, including reservoir pressure maintenance operations.

(d) Stripper oil well property royalty rate reduction shall be administered according to the following requirements and procedures.

(1) An application for the benefits under paragraph (a) of this section for stripper oil well properties is not required.

(2) Total oil production (regardless of disposition) for the subject period from the eligible wells on the property is totaled and then divided by the total number of well days or portions of days, both producing and injection days, as reported on Form MMS–3160 or MMS–4054 for the eligible wells to determine the property average daily production rate. For those properties in communitization agreements and participating areas of unit agreements that have allocated (not actual) production, the production rate for all eligible well(s) in that specific communitization agreement or participating area is determined and shall be assigned to that allocated property in that communitization agreement or participating area.

(3) Procedures to be used by operator:

(i) Qualifying determination.

(A) Calculate an average daily production rate for the property in order to verify that the property qualifies as a stripper property.

(B) The initial qualifying period for producing properties is the period August 1, 1990, through July 31, 1991. For the properties that were shut-in for 12

consecutive months or longer, the qualifying period is the 12-month production period immediately prior to the shut-in. If the property does not qualify during the initial qualifying period, it may later qualify due to production decline. In those cases, the 12-month qualifying period will be the first consecutive 12-month period beginning after August 31, 1990, during which the property qualifies.

(ii) Qualifying royalty rate calculation. If the property qualifies, use the production rate rounded down to the next whole number (e.g., 6.7 becomes 6) for the qualifying period, and apply the following formula to determine the maximum royalty rate for oil production from the Federal leases for the life of the program.

Royalty Rate (%) = 0.5 + (0.8 × the average daily production rate)

The formula-calculated royalty rate shall apply to all oil production (except condensate) from the property for the first 12 months. The rate shall be effective the first day of the production month after the Minerals Management Service (MMS) receives notification. If the production rate is 15 barrels or greater, the royalty rate will be the rate in the lease terms.

(iii) Outyears royalty rate calculations.

(A) At the end of each 12-month period, the property average daily production rate shall be determined for that period. A royalty rate shall then be calculated using the formula in paragraph (d)(3)(ii) of this section.

(B) The new calculated royalty rate shall be compared to the qualifying period royalty rate. The lower of the two rates shall be used for the current period provided that the operator notifies the MMS of the new royalty rate. The new royalty rate shall not become effective until the first day of the month after the MMS receives notification. Notification shall be received on Form MMS–4377 and mailed to Minerals Management Service, P.O. Box 17110, Denver, CO 80217. If the operator does not notify the MMS of the new royalty rate within 60 days after the end of the subject 12-month period, the royalty rate for the property shall revert back to the royalty rate established as the qualifying period royalty rate, effective at the beginning of the current 12-month period.

(C) The royalty rate shall never exceed the calculated qualifying royalty rate for the life of this program.

(iv) Prohibition. For the qualifying period and any subsequent 12-month period, the production rate shall be the result of routine operational and economic factors for that period and for that property and not the result of production manipulation for the purpose of obtaining a lower royalty rate. A production rate that is determined to have resulted from production manipulation will not receive the benefit of a royalty rate reduction.

(v) Certification. The applicable royalty rate shall be used by the operator/payor when submitting the required royalty reports/payments to MSS. By submitting royalty reports/payments using the royalty rate reduction benefits of this program, the operator certifies that the production rate for the qualifying and subsequent 12-month period was not subject to manipulation for the purpose of obtaining the benefit of a royalty rate reduction, and the royalty rate was calculated in accordance with the instructions and procedures in these regulations.

(vi) Agency action. If a royalty rate is improperly calculated, the MMS will calculate the correct rate and inform the operator/payors. Any additional royalties due are payable immediately upon notification. Late payment or underpayment charges will be assessed in accordance with 30 CFR 218.102. The BLM may terminate a royalty rate reduction if it is determined that the production rate was manipulated by the operator for the purpose of receiving a royalty rate reduction. Terminations of royalty rate reductions will be effective on the effective date of the royalty rate reduction resulting from the manipulated production rate (i.e., the termination will be retroactive to the effective date of the improper reduction). The operator/payor shall pay the difference in royalty resulting from the retroactive application of the unmanipulated rate. Late payment or underpayment charges will be assessed in accordance with 30 CFR 218.102.

(4) The royalty rate reduction provision for stripper well properties shall be effective as of October 1, 1992. If the oil price, adjusted for inflation by BLM and MMS, using the implicit price deflator for gross national product with 1991 as the base year, remains on average above $28 per barrel, based on West Texas Intermediate crude average posted price for a period of 6 consecutive months, the benefits of the royalty rate reduction under this section may be terminated upon 6 months' notice, published in the Federal Register.

(5) The Secretary will evaluate the effectiveness of the stripper well royalty reduction program and may at any time after September 10, 1997, terminate any or all royalty reductions granted under this section upon 6 months notice.

(6) The stripper well property royalty rate reduction benefits shall apply to all oil produced from the property.

(7) The royalty for gas production (including liquids produced in association with gas) for oil completions shall be calculated separately using the lease royalty rate.

(8) If the lease royalty rate is lower than the benefits provided in this stripper oil property royalty rate reduction program, the lease rate prevails.

(9) The minimum royalty provisions of § 3103.3–2 apply.

(10) Examples.

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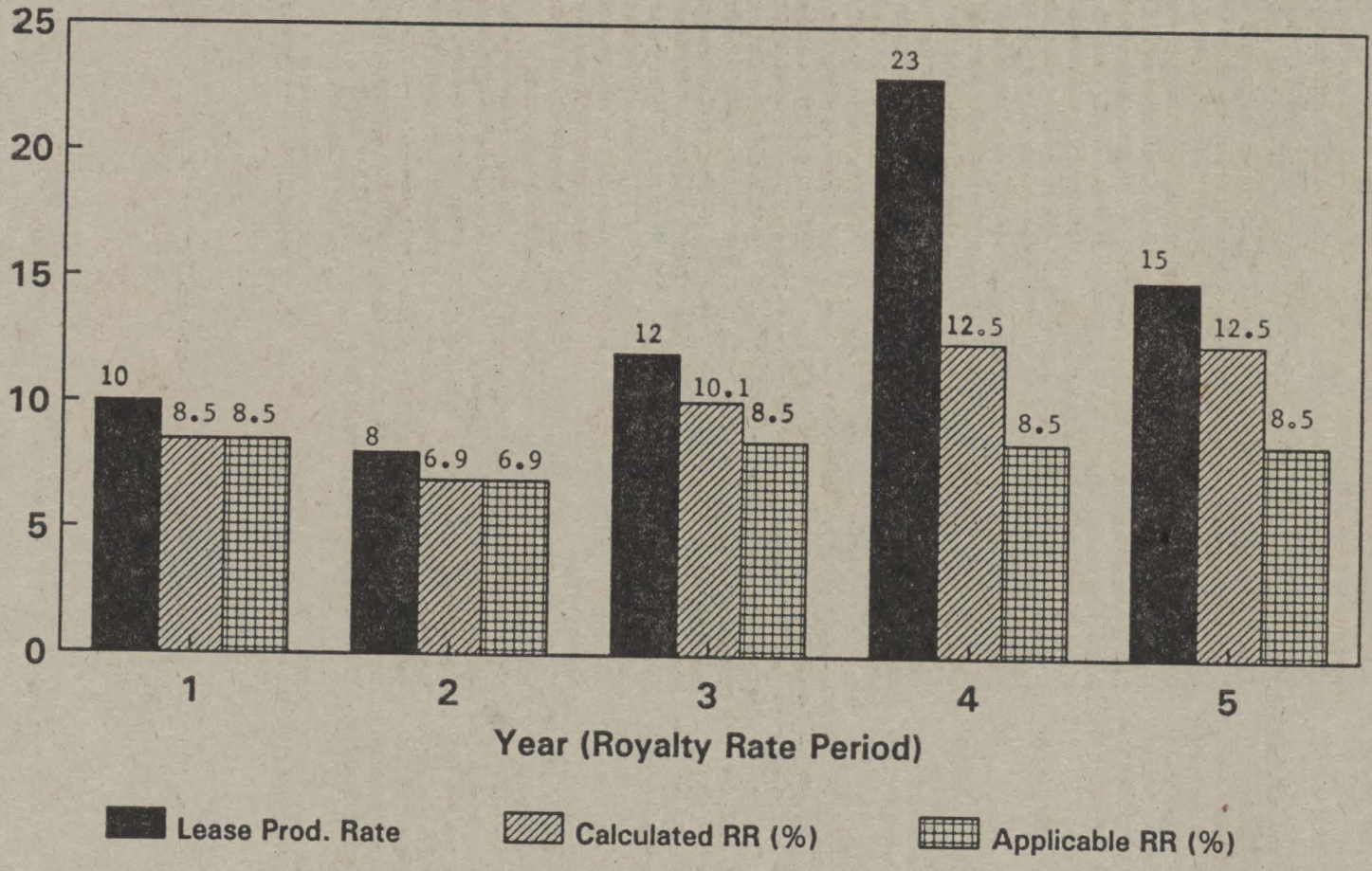
Royalty Rate (RR) Reduction
Example 1: Immediate Qualification



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Explanation, Example 1

1. Property production rate per well for qualifying period (August 1, 1990–July 31, 1991) is 10 barrels of oil per day (BOPD).

2. Using the formula, the royalty rate for the first year is calculated to be 8.5 percent. This rate is also the maximum royalty rate for the life of the program.

$8.5\% = 0.5 + (0.8 \times 10)$

3. Production rate for the first year is 8 BOPD.

4. Using the formula, the royalty rate is calculated at 6.9 percent. Since 6.9 percent is less than the first year rate of 8.5 percent, 6.9 percent is the applicable royalty rate for the second year.

$6.9\% = 0.5 + (0.8 \times 8)$

5. Production rate for the second year is 12 BOPD.

6. Using the formula, the royalty rate is calculated at 10.1 percent. Since the 8.5 percent first year royalty rate is less than 10.1 percent, the applicable royalty rate for third year is 8.5 percent.

$10.1\% = 0.5 + (0.8 \times 12)$

7. Production rate for the third year is 23 BOPD.

8. Since the production rate of 23 BOPD is greater than the 15 BOPD threshold for the program, the calculated royalty rate would be the property royalty rate. However, since the 8.5 percent first year royalty rate is less than the property rate, the royalty rate for the fourth year is 8.5 percent.

9. Production rate for the fourth year is 15 BOPD.

10. Since the production is at the 15 BOPD threshold, the royalty rate would be the property royalty rate. However, since the 8.5 percent first year royalty rate is less than the lease rate, the royalty rate for the fifth year is 8.5 percent.

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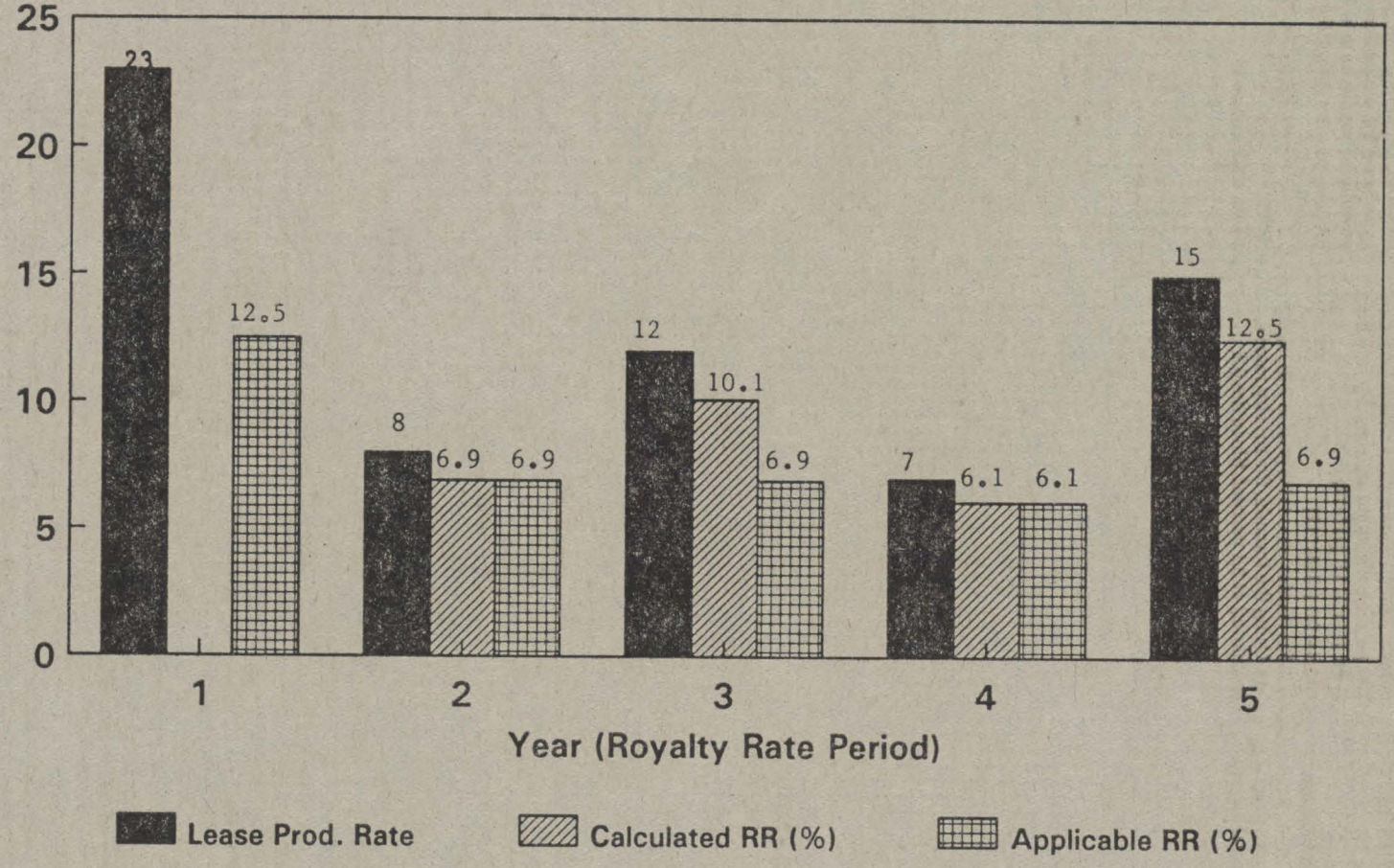
Royalty Rate (RR) Reduction
Example 2: Subsequent Qualification



BILLING CODE 4310-84-C

Explanation, Example 2

1. Property production rate of 23 BOPD per well (for the August 1, 1990–July 31, 1991, qualifying period prior to the effective date of the program) is greater than the 15 BOPD which qualifies a property for a royalty rate reduction. Therefore, the property is not entitled to a royalty rate reduction for the first year of the program.

2. Property royalty rate for the first year is the rate as stated in the lease.

3. Production rate for the first year is 8 BOPD.

4. Using the formula, the royalty rate is calculated to be 6.9 percent for the second year. This rate is also the maximum royalty rate for the life of the program.

$6.9\% = 0.5 + (0.8 \times 8)$

5. Production rate for the second year is 12 BOPD.

6. Using the formula, the royalty rate is calculated at 10.1 percent. Since the 6.9 percent second year royalty rate is less than 10.1 percent, the applicable royalty rate for third year is 6.9 percent.

$10.1\% = 0.5 + (0.8 \times 12)$

7. Production rate third year is 7 BOPD.

8. Using the formula, the royalty rate is calculated at 6.1 percent. Since the 6.1 percent third year royalty rate is less than the qualifying (maximum) rate of 6.9 percent, the royalty rate for the fourth year is 6.1 percent.

$6.1\% = 0.5 + (0.8 \times 7)$

9. Production rate for the fourth year is 15 BOPD.

10. Since the production is at the 15 BOPD threshold, the royalty rate would be the lease royalty rate. However, since the 6.9 percent second year royalty rate is less than the lease rate, the royalty rate for the fifth year is 6.9 percent.

Appendix:

BILLING CODE 4310-84-M

U.S. DEPARTMENT OF THE INTERIOR

STRIPPER ROYALTY RATE REDUCTION NOTIFICATION

NOTE: Reduced Royalty Rate is not effective until the month after this notification is received by the Minerals Management Service. See 43 CFR Part 3100 for complete instructions.

OPERATOR NAME: _____ DATE SUBMITTED _____

OPERATOR NUMBER: _____

PERSON TO CONTACT _____ _____ _____ _____

AREA CODE | TELEPHONE NUMBER | EXTEN.

LEASE NUMBER(S)	AGREEMENT NUMBER \1	QUALIFYING OR CURRENT PERIOD \2	QUALIFYING ROYALTY RATE	CURRENT ROYALTY RATE \3	EFFECTIVE DATES

NOTE: THIS NOTIFICATION MUST BE SUBMITTED TO MMS AND ALL PAYORS ON THE LEASES.

\1 Include agreement number for any lease located in an agreement. All leases in the agreement must be listed separately.

\2 Initial qualifying period August 1, 1990, through July 31, 1991, or current period. If the property does not initially qualify, subsequent qualifying period would be the latest 12-month period before the property qualifies (i.e., a 12-month rolling average).

\3 Current period royalty rate must be compared to qualifying period royalty rate and the lower of the two rates will be the royalty rate for the subsequent year, when notification is received by MMS.

FORM MMS-4377 (5/92)

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